

# Exhibit 29

Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF VIRGINIA  
3                           RICHMOND DIVISION

4                           ~~~~~  
5           CHMURA ECONOMICS & ANALYTICS, LLC  
6                                 Plaintiff

7                           vs.                                   Case No. 3:19-CV-00813

8           RICHARD LOMBARDO  
9                                 Defendants

10                           ~~~~~  
11                           REMOTE VIDEO DEPOSITION OF:  
12                                 CHRISTINE CHMURA, PH.D.

13                                 Taken on:  
14                                 May 1, 2020  
15                                 11:00 a.m.

16                                 Taken at:

17                                 McGuire Woods, LLP  
18                                 Gateway Plaza  
19                                 800 East Canal Street  
20                                 Richmond, VA

21                                 Kelliann D. Linberg, RPR, Notary Public

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1 APPEARANCES: (Via Videoconference)

2 On behalf of the Plaintiffs:

3 Koehler Fitzgerald, LLC  
CHRISTINE M. COOPER, ESQ.  
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6 216-539-9370.

7

8 On behalf of the Defendants:

9 McGuire Woods, LLP  
RODNEY A. SATTERWHITE, ESQ.  
10 Gateway Plaza  
800 East Canal Street  
11 Richmond, VA, 23219-3916  
Rsatterwhite@mguirewoods.com  
12 804-775-1000.

13

14 ALSO PRESENT:

15 RICHARD LOMBARDO

16

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	INDEX OF EXHIBITS	
	Number	Description
	Defendant's	Marked
1	Exhibit A	Previously Marked Copy of Notice of Deposition
2	Exhibit D	Previously Marked Copy of Amended Complaint
3	Exhibit E	Previously Marked Copy of Letter Dated 2/3/15 to Richard Lombardo, Bates CHMURA000097
4	Exhibit B	Copy of Plaintiff's Designations and Objections to Richard Lombardo's Notice of Deposition
5	Exhibit Q	Copy of Chmura Employee Handbook Dated 7/19/2019
6	Exhibit S	Copy of Standard Operating Procedures Dated 4/5/2019
7	Exhibit T	Copy of Email with Standard Operating Procedures Dated 7/10/2019 Attached
8	Exhibit X	Highly Confidential Copy of Email Dated 10/2/2019 Bates CHMURA0201264-269
9	Exhibit C	Previously Marked Copy of Articles of Organization for a Domestic Limited Liability Company, Ohio, Dated 9/2/2011
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1                   COURT REPORTER: The attorneys  
2 participating in this deposition acknowledge that I am  
3 not physically present in the deposition room and that  
4 I will be reporting this deposition remotely. They  
5 further acknowledge that, in lieu of an oath  
6 administered in person, the witness will verbally  
7 declare her testimony in this matter is under penalty  
8 of perjury. The parties and their counsel consent to  
9 this arrangement and waive any objections to this  
10 manner of reporting.

11                  Please indicate your agreement by stating  
12 your name, firm name, party represented and your  
13 agreement on the record.

14                  MS. COOPER: My name is Christine Cooper.  
15 I represent Richard Lombardo, and I agree.

16                  MR. SATTERWHITE: Rob Satterwhite from  
17 McGuire Woods representing Chmura, and we also agree.

18                  CHRISTINE CHMURA, Ph.D., of lawful age,  
19 called for examination, as provided by the Ohio Rules  
20 of Civil Procedure, being by me first duly sworn, as  
21 hereinafter certified, deposed and said as follows:

22                  EXAMINATION OF CHRISTINE CHMURA, Ph.D..

23 BY MS. COOPER:

24 Q. Good morning, Dr. Chmura. I am Christine  
25 Cooper. I represent Mr. Lombardo in the case filed by

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1 Chmura in the Eastern District of Virginia. I am going  
2 to start with some background information. Forgive me,  
3 since we are doing this by video, my video is on one  
4 screen, and my screen with you is on the other. So if  
5 I am looking in both directions, that's why.

6 Can you please state your full name for the  
7 record?

8 A. Christine Chmura.

9 Q. And what's your residential address?

10 A. [REDACTED]  
11 [REDACTED].

12 Q. Have you ever been deposed before?

13 A. Yes.

14 Q. When was the last time you were deposed?

15 A. Probably a couple of years ago.

16 Q. Have you been deposed more than once?

17 A. Yes.

18 Q. How many times have you been deposed?

19 A. At least five.

20 Q. Were those depositions in your individual  
21 capacity?

22 A. No, as an expert witness representing the  
23 firm.

24 Q. Do you recall the cases that you testified  
25 in?

1           A.     I do not.

2           Q.     And what was the subject matter that you  
3 testified about?

4           A.     I recall one being a wrongful death,  
5 another was related to the economy, or what the crux of  
6 the economy was during a period of time, and another  
7 one -- another one I had forgotten that just came to my  
8 mind was for Dominion Power related to investments and  
9 the economic impact of those investments.

10          Q.     Was your testimony -- sorry. Was this --  
11 and I will get to my ground rules. I am breaking my  
12 ground rules now. I apologize. I jumped in. I will  
13 step back if you haven't completed your answer. It's a  
14 little harder for me to pick up on the cues on the  
15 video than if we were in the room together.

16           Was the subject matter of your testimony  
17 related to damages in those cases?

18           MR. SATTERWHITE: Object to the form.

19          Q.     You can go ahead and answer.

20          A.     Yes.

21          Q.     I am going to go over so some ground rules,  
22 so I don't break them myself, since it's been a little  
23 while since you have been deposed. If you could  
24 respond with a yes or no as opposed to an uh-huh or  
25 uh-uh, or shaking of your head so that the court

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1 reporter can get your answer down. I would ask that  
2 you wait until I finish the question before answering  
3 so we are not talking over each other.

4 I, in return, will take a long pause to  
5 make sure that you are done answering before I ask my  
6 next question. If you don't understand a question,  
7 please ask me to repeat it or rephrase it. And if you  
8 need a break, just ask at any time. The only request I  
9 would have is that if there is an open question  
10 pending, that you provide an answer before we break.  
11 Does that make sense?

12 A. Yes.

13 Q. Did you bring anything with you to the  
14 deposition today, any documents with you to the  
15 deposition today?

16 A. No.

17 Q. Can you tell me about your education, your  
18 higher education?

19 A. I have a B.S. Degree from Clemsen  
20 University in Business, then I, for one year, went to a  
21 bible college and got a one year certificate, Master's  
22 in Missions. I went back to Clemsen and got a Master's  
23 Degree in Economics. And more recently, went to  
24 Virginia Commonwealth University and got a Ph.D. in  
25 Business Administration with emphasis on Economics and

1 Finance.

2 Q. When did you earn that degree?

3 A. It was several years ago. I'm not good  
4 with dates, I will just let you know that right now.

5 Q. That's okay. Was it within the last 10  
6 years?

7 A. No. I started my company 20 years ago and  
8 it was prior to that.

9 Q. Are you the founder of Chmura Economics &  
10 Analytics, LLC?

11 A. Yes, I am.

12 Q. When did you found Chmura?

13 A. 1998 is when we filed the SCC. December.

14 Q. At that point, was it called Chmura  
15 Economics & Analytics, LLC?

16 A. No, it was called Capital Research &  
17 Analytics, LLC.

18 Q. At what point did it become Chmura  
19 Economics & Analytics?

20 A. Probably a year later.

21 Q. What was the reason for the name change?

22 A. Capital -- we were in the capital, so that  
23 -- Chmura is a stronger word, more rememberable, once  
24 you can learn how to pronounce it correctly, so we  
25 thought that was a better name. Also, I had a good

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1       reputation in the state and it would carry some weight.

2           Q.     Am I pronouncing it right when I say  
3       Chmura?

4           A.     That's good enough. Chmura. Thank you for  
5       asking.

6           Q.     Prior to the founding of Chmura, what did  
7       you do?

8           A.     Prior to the company, I was the chief  
9       economist at Crestar Bank, which was purchased by  
10      Suntrust. When they were purchased, they asked me to  
11      go to Atlanta to be the chief economist. By saying no,  
12      I was given severance and able to take several large  
13      projects with me to start the company.

14          Q.     When Chmura was founded, what type of  
15      business was it?

16          A.     Consulting. Economic consulting.

17          Q.     And has it changed over time?

18          A.     Yes, we do economic consulting. We have  
19      macro economic models that we run. Most of our  
20      customers, at first, were banking, and then we got more  
21      into workforce. We created JobsEQ in early 2000 and  
22      have shifted over time to more software than consulting  
23      work in terms of revenue.

24          Q.     Can you tell me a little about JobsEQ and  
25      what it is?

1           A.     JobsEQ is a S A A S product, so it is  
2 software as a --

3 (Reporter asked for clarification).

4 S-A-A-S, software as a service.

It provides demographic information, labor market information to realtime job postings. It gives people the ability to see what's a forecast for a particular region, whether that be a county, MSA, or a zip code footprint so that they can see what sort of courses should I teach, if I am an educator; if a firm moves here, will they find the workers they need; if I move to a certain place, will I find the workers that I need and that type of thing.

14 Q. Now, you are here today as a corporate  
15 representative on behalf of Chmura, correct?

16 A. Yes.

17 Q. And you are also here in your individual  
18 capacity?

19 A. Yes.

20 Q. I am going to start with your testimony  
21 relating to your corporate representation, and we will  
22 complete the individual stuff later in the deposition.  
23 I am going to try to do a clean break on that to keep  
24 it clear in the record where we are at. What is --  
25 pardon me.

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1                   Are you a current owner of Chmura?

2                   A.     Yes, I am.

3                   Q.     And what is your title?

4                   A.     Dr. Christine Chmura, CEO and Chief  
5 Economist.

6                   Q.     What is your ownership interest in Chmura?

7                   A.     49%.

8                   Q.     Who are the other owners?

9                   A.     Leslie Peterson, John Chmura, Xiaobing  
10 Shuai, Sharon Simmons, Greg Chmura.

11                  Q.     What are their ownership interests,  
12 starting with Ms. Peterson?

13                  A.     Let me just tell you again I am not really  
14 good with numbers like that. When you ask me about the  
15 economy and I will do fine. So John Chmura is 5%.  
16 Greg Chmura is 3%. Leslie Peterson is the remainder.  
17 Xiaobing Shuai, Sharon Simmons and Greg Chmura all have  
18 profit interests.

19                  Q.     Can you explain to me the idea of profit  
20 interests?

21                  A.     So let's say they were given this profit  
22 business in 1999, that means if the company were worth  
23 \$1,000,000 in 1999, a valuation was done and let's say  
24 it was worth \$1,000,000, then if we sold the next day  
25 for \$2,000,000, then they would benefit from the

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1 difference. They would get a percentage of that  
2 1,000,000, but they would not have -- get a percentage  
3 of the total equity.

4 Q. Okay. I understand. Thank you. Now, I  
5 notice there are some shared last names as far as the  
6 owners. What is your relationship to Greg Chmura?

7 A. Greg Chmura is my brother.

8 Q. And how are you related to John Chmura?

9 A. John Chmura is my nephew.

10 Q. Are there any other owners that you are  
11 related to?

12 A. No.

13 Q. I am going to show you what's been marked  
14 as Defendant's Exhibit A.

15 - - - - -  
16 (Thereupon, Previously Marked  
17 Deposition Exhibit A, Copy of Notice of  
18 Deposition, was shown for purposes of  
19 identification.)  
20 - - - - -

21 Q. I will give you control of this as well  
22 (indicating). So now you can scroll through this  
23 document.

24 MR. SATTERWHITE: Let me know if you want  
25 me to go faster or slower.

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1           A.     Is there a purpose for me to scroll through  
2 this? It might help to know while I am looking at it.

3           Q.     Just to know if you recognize this  
4 document, if you have seen it before, and then we are  
5 going to go through Exhibit A that is attached to it.

6           A.     (Reviewing).

7           Q.     Have you seen this document before?

8           A.     Yes, I believe I have seen it before.

9           Q.     And can you describe what it is? If we  
10 can, go back to the front of it.

11          A.     Chmura, Plaintiff, Notice of Deposition.

12          Okay. So it -- is this the document that has questions  
13 for the deposition today?

14          Q.     Yes, it is.

15          A.     Okay.

16          Q.     Have you reviewed this prior to your  
17 deposition today?

18          A.     Oh, yeah.

19          Q.     And you are here to testify about certain  
20 topics set forth in that notice, correct?

21          A.     That's correct.

22          Q.     Generally, how did you prepare for your  
23 deposition today?

24          A.     Generally, I read the questions. I  
25 sometimes looked at some emails. I read, you know, the

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1 documents that have been submitted to the court.

2 Q. Did you have -- did you speak with  
3 anyone -- and let me caution, I am not looking for  
4 communications with your attorney. Did you speak with  
5 anyone other than your attorney about your deposition  
6 today?

7 A. Yes. Yes.

8 Q. Who did you speak with?

9 A. I spoke with Greg Chmura. I spoke with  
10 John Chmura. I spoke with Leslie Peterson. I spoke  
11 with Sharon Simmons. I spoke with Aisha. I think  
12 that's it.

13 Q. Starting with Greg, what was the substance  
14 of your conversation?

15 A. I can't remember all my conversations. I  
16 have so many every day, but with Greg, I recall talking  
17 to him about the estimate, the present value of the  
18 loss related to the IEDC event.

19 Q. How about with John Chmura?

20 A. With John, we probably talked about the  
21 times log we put together.

22 Q. And what about with Ms. Peterson?

23 A. We probably talked about everything. We  
24 talked about what -- some of what she was answering. I  
25 probably ran by her some of the thoughts to make sure

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1 my recollection was correct on some of these other  
2 items.

3 I am sure we talked about that letter that  
4 Rick falsified and lied about in terms of having a job  
5 opportunity and the difficult situation that put us in  
6 with a client that we were developing, or a vendor that  
7 we were developing a relationship with.

8 Q. And what about with Sharon Simmons?  
9 Correct?

10 A. Sharon Simmons? I believe we were looking  
11 at sales, historic sales -- we've talked about a lot of  
12 things. I mean, we work together. But historic sales  
13 and why Rick didn't get 15%, which was because he  
14 didn't make the full sale.

15 Q. And what was your conversation -- well, let  
16 me step back. You mentioned Aisha. Is that Aisha  
17 Ortiz?

18 A. Yes.

19 Q. And what was your conversation with  
20 Ms. Ortiz?

21 A. Just a quick conversation on when she put  
22 the work from home policy together. She actually  
23 revised it. A-I-S-H-A.

24 Q. Is there anything else you did to prepare  
25 for your deposition today?

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1           A.     I prayed about it.

2           Q.     All right. I am going to turn your  
3 attention to Exhibit A, Defense Exhibit A, the exhibit  
4 attached to that. And that's confusing.

5                 Number 2, "The factual basis for all  
6 allegations in the Amended Complaint and denials in the  
7 Answer to the Counterclaim."

8                 You have been designated as the corporate  
9 representative to speak on that topic, correct?

10          A.     Correct.

11          Q.     I am going to show you what's been marked  
12 as Defendant's Exhibit D, which I will represent to you  
13 is the Amended Complaint.

14                             - - - - -

15                 (Thereupon, Previously Marked  
16                 Deposition Exhibit D, Copy of Amended  
17                 Complaint, was shown for purposes of  
18                 identification.)

19                             - - - - -

20          Q.     I will give you control of that as well.  
21 Go ahead and take a look at this.

22                 THE WITNESS: Too bad we can't have it in  
23 our hands. It would be a lot easier.

24                 MR. SATTERWHITE: I agree.

25          A.     I am familiar with the document if you want

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1 to ask specific questions, we can go to that area.

2 Q. Sure. This is the First Amended Complaint  
3 filed by Chmura against Richard Lombardo, correct?

4 A. Yes.

5 Q. I want to draw your attention first to  
6 Paragraph 4 of the Complaint.

7 A. Okay.

8 Q. This paragraph is "The value of information  
9 Lombardo has retained, and the customer contracts with  
10 which Lombardo has threatened to interfere, is well  
11 over \$100,000."

12 With respect to that, what information does  
13 this paragraph refer to?

14 A. Okay. So Mr. Lombardo had a computer of  
15 ours that he used at a conference, IEDC conference, and  
16 previous to that, a Texas conference. And we go to  
17 these conferences and sit in an exhibit booth for the  
18 sole purpose of meeting people, getting their contact  
19 information and then following up with a demo, which  
20 needs to be done as soon as possible afterward.

21 And this is not at a small expense to us.

22 For example, the IEDC, we're a corporate sponsor, which  
23 means we pay \$25,000 a year to be called a sponsor, and  
24 then we pay more money to send people to these  
25 conferences. This particular one, I believe in

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1 Indianapolis, I attended, Eli attended, Rick attended,  
2 two other salespeople attended.

3 I was a speaker at the conference. I gave  
4 a Ted Talk -- not a Ted Talk, sorry. It was an Ed  
5 Talk. If it was a Ted Talk, then you have to pay Ted  
6 money, so they call it an Ed Talk.

7 And I was a speaker at the opening session,  
8 and whenever I'm a speaker, that draws a lot more  
9 people to our booth. So the bottom line is, when we go  
10 to these events, we are there to learn about other  
11 people who would like to see JobsEQ. Rick was taking  
12 down everyone's name, and we had quite a long list.

13 When he returned, he refused to give us  
14 that computer. I went through the list of names, and I  
15 identified those who had requested a demo. One person  
16 was handed, or asked for a contract while we were at  
17 the event which I didn't -- I assume that that was  
18 probably before then. I didn't assume that person  
19 wanted a demo.

20 When we give demos, 24% of the people who  
21 get a demo end up getting a license for the product.  
22 Based on that, we should have had five -- at least five  
23 licenses come out of that event. On average, our --  
24 our average sale is about 8,000.

25 And then we took that \$3,000 amount in the

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1       first year, and we did the present value going forward  
2       for four additional years. We used 2% inflation rate  
3       to discount it, and we also assumed that we would have  
4       some runoff; that is, in the first year, we lose -- or  
5       83% of people don't sign up, but after that, 90%, 91%  
6       sign up. Taking all of those things into account, the  
7       amount came to well over \$100,000. I believe it was  
8       198,000.

9           Q.     So the information that you were referring  
10      to in Paragraph 4 is the conference notes from the IEDC  
11      conference, as well as the Texas conference; is that  
12      correct?

13          A.     That's correct.

14          Q.     Is there any other information that the  
15      paragraph refers to?

16          A.     Well, I don't know what Rick, or  
17      Mr. Lombardo, did with those customer contacts that he  
18      had, whether he has given them to someone else. That's  
19      not taken into account, that amount.

20          Q.     What customer contacts are you referring  
21      to?

22          A.     Well, once we did get the computer back, he  
23      had an Excel sheet that we sent out weekly to our  
24      account managers that had every single user written  
25      down on it, all the -- every institution that's using

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1       it, all the people within the institution that's using  
2       it, when they last used the software, and how many  
3       minutes of software time that they were using.

4           Q.     That's separate and apart from the  
5       conference notes you just talked about?

6           A.     That is correct.

7           Q.     Do you have any basis for asserting that  
8       Mr. Lombardo did anything with that Excel sheet?

9                   MR. SATTERWHITE: Object to the form. Go  
10      ahead.

11           A.     Eventually, over time, it became apparent  
12       that Mr. Lombardo does not tell the truth. Even when  
13       pushed, you really have to push him to get him to tell  
14       the truth. And so I have no reason to believe that he  
15       has not given that away.

16                   He left the company saying that he was  
17       going to destroy the firm, he was going to sell our  
18       company list to the highest bidder. Things like that  
19       make me not trust his word.

20           Q.     Have any customers come to you and said  
21       that their -- well, let me rephrase that.

22                   Do you have any factual basis other than --  
23       do you have any factual basis for believing  
24       Mr. Lombardo retained the customer list?

25                   MR. SATTERWHITE: Object to the form.

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1           A.     Yes, it was on the computer that belonged  
2 to us, and we also --

3           Q.     Did -- go ahead. You were going to say,  
4 and we also. Go ahead and finish your thought.

5           A.     We were -- Mr. Lombardo provided to a  
6 recruiter a list of our salespeople and the dollar  
7 amounts of their sales, which we would consider  
8 confidential. And we understand that that recruiter  
9 provided it to a software company; who knows where it  
10 went after that.

11          Q.     Did that list have any customer contact --  
12 customer information on it?

13          A.     That particular list did not.

14          Q.     Do you have any factual basis for believing  
15 Mr. Lombardo distributed that Excel spreadsheet  
16 mentioned a few minutes ago?

17                MR. SATTERWHITE: Object to the form.

18          A.     Not at this point in time.

19          Q.     Is there any other information you are  
20 referring to in paragraph -- or Chmura is referring to  
21 in Paragraph 4 of the Amended Complaint?

22                MR. SATTERWHITE: Object to the form.

23          A.     Not that I know of at this point.

24          Q.     I want to turn to Paragraph Number 11 and  
25 12 of the Amended Complaint, Exhibit D.

Page 23

1           Can you tell me --

2       A.    I'm sorry. I am still reading.

3       Q.    Okay. Sorry.

4       A.    (Reviewing).

5           Okay. Thank you.

6       Q.    Paragraph Number 11 states, in part, that  
7 Lombardo customers are located in the midwest --  
8 although many -- let me say it properly.

9                 "Although many of Lombardo's customers were  
10 located in the Midwest, he sold to customers  
11 nationwide."

12                 With respect to Mr. Lombardo's sales, where  
13 was he conducting his sales from?

14                 MR. SATTERWHITE: Christine, I am going to  
15 object with respect to the designation because you also  
16 identified in Category 13, his job duties and job  
17 description, and that we have designated Ms. Peterson  
18 for. I have no problem with Dr. Chmura answering, but  
19 I do object on the grounds that it is not a designated  
20 topic.

21                 MS. COOPER: Okay.

22                 MR. SATTERWHITE: Go ahead.

23       A.    Can you ask the question again, please?

24       Q.    Yes, I can.

25                 Primarily, where does Mr. Lombardo conduct

Page 24

1 his work?

2 A. He conducted his work in exhibit booths.

3 That's where we got a lot of -- you are talking  
4 physically, right?

5 Q. Physically, yes.

6 A. Yeah, exhibit booths. That's where we got  
7 a lot of our leads. He sometimes went to customers,  
8 for example, Cuyahoga County, Columbus -- I am trying  
9 to win a very large contract with the State of Ohio --  
10 and then from his office, from our office at 1025 Huron  
11 Road. And he worked from home over the last year he  
12 was working for us as well.

13 Q. If you know, what percentage of his time  
14 was spent in the Huron Road office?

15 MR. SATTERWHITE: If it is easier, I will  
16 lodge a standing objection to this issue rather than  
17 object every time, because I certainly don't want to do  
18 that, but go ahead.

19 MS. COOPER: Okay.

20 A. I don't have a sense of that.

21 Q. Turn to Paragraph 15.

22 A. (Reviewing).

23 I'm finished.

24 Q. And then -- Paragraph 15 refers to a  
25 Confidential, Non-Competition and Non-Solicitation

Page 25

1       Agreement, correct?

2           A.     Correct.

3           Q.     And it states that, "A true and correct  
4 copy of the Agreement is attached as Exhibit A"?

5           A.     Correct.

6           Q.     If you will, turn to Exhibit A.

7           A.     (Indicating). That's fine, I am familiar  
8 with this.

9           Q.     Is this a true and accurate of copy of the  
10 Confidentiality, Non-Competition, Non-Solicitation  
11 Agreement between Mr. Lombardo and Chmura?

12          A.     Yes.

13          Q.     Could you turn to Paragraph 24?

14           MR. SATTERWHITE: Of the First Amended  
15 Complaint?

16           MS. COOPER: Of the First Amended  
17 Complaint, yes.

18          A.     (Reviewing.)

19           MR. SATTERWHITE: All set?

20           THE WITNESS: Sorry, I didn't know you were  
21 waiting.

22          Q.     That is part of the disconnect of not being  
23 in the room together, so I apologize. I don't want to  
24 speak over you. I will wait for your cue.

25           With respect to Paragraph 24, it states

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1       that, "Chmura's sales have grown significantly over the  
2       past four years." What is the factual basis for that  
3       statement?

4           A.     Are we talking about JobsEQ sales here, or  
5       are we talking about revenue total? I was --

6           Q.     You have --

7           A.     The JobsEQ sales. They have grown  
8       significantly over the past four years. Well, we have  
9       revenue numbers, so, yes, they have. I don't  
10      understand the state -- the question. We went --

11       Q.     Was -- I'm sorry, go ahead.

12       A.     I was going to say, you know, we went from  
13      maybe having 40 customers to over 500, and that also  
14      reflects the sales.

15       Q.     And Mr. Lombardo was employed during that  
16      four years at Chmura, right?

17       A.     That is correct.

18       Q.     How much of that growth in sales is  
19      attributable to Mr. Lombardo?

20           MR. SATTERWHITE: Object to the form.

21       A.     I don't have those numbers in front of me,  
22      but he was our top salesperson, followed closely by  
23      Austen Steele.

24       Q.     Is Mr. Steele still with Chmura?

25       A.     No, he is not.

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1           Q.     To your knowledge, did Mr. Lombardo's sales  
2 percentage, based on revenues, exceed 30% of the total  
3 sales over the period of his employment?

4           A.     I would really need to have the numbers in  
5 front of me and work that out.

6           Q.     And what would you look at to derive those  
7 numbers?

8           A.     I would look at total sales and total sales  
9 from Mr. Lombardo, and I would back out a book of  
10 business we handed to him when he came to the company.

11          Q.     Was Mr. Lombardo responsible for making a  
12 client relationship with a book of business that was  
13 handed to him?

14          A.     Yes, he was.

15          Q.     And did he have renewals for that book of  
16 business?

17          A.     Sometimes. We don't have a 100% renewal  
18 rate. It is more like 83%.

19          Q.     Do you know what Mr. Lombardo's renewal  
20 rate was?

21          A.     I believe it was around that amount.

22          Q.     So is it fair to say that Mr. Lombardo  
23 contributed significantly to that growth referenced in  
24 Paragraph 24 of the Amended Complaint?

25          A.     Yes.

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1           Q.     Paragraph 24 also states, "Chmura is also  
2     in the process of revising its commission structure for  
3     sales representatives." Do you see that?

4           A.     I do.

5           Q.     How is it changing the structure -- how was  
6     Chmura changing the structure?

7           A.     Well, when you have a business such as the  
8     one that we have, we are all about serving our clients,  
9     making sure that they get what they need, and we want  
10    to help as many people as we can. So if you look at  
11    having three salespeople, they can't possibly serve  
12    well the client base that we expect to have years from  
13    now. So we were considering adding -- we are adding --  
14    we are considering adding more people, more salespeople  
15    so that we could serve a broader client base, and  
16    support staff.

17          Q.     And it also references, "revising its  
18    commission structure." How was the commission  
19    structure revised?

20          A.     Now, this was not revised before  
21    Mr. Lombardo left, but the then sales manager at the  
22    time wanted us to consider increasing individuals  
23    salaries and decreasing the percent commissioned, and  
24    the percent that they would get when someone else  
25    signed up, or resigned a contract. Part of this was,

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1       ultimately, necessary because additional work that the  
2       sales staff was doing was pushed back to the accounting  
3       group.

4           Q.       Now, you just testified that -- as part of  
5       your last answer, that before Mr. Lombardo left.  
6       Mr. Lombardo was terminated by Chmura, right?

7           A.       Yes, he was terminated.

8           Q.       He didn't voluntarily leave?

9           A.       No. Sorry, I used the wrong word. He was  
10      terminated. But left was -- the same as terminated.  
11      But I'll use terminated in the future.

12           Q.       That's okay. I just wanted to clarify.

13                  Can you look at Paragraph 25 for me?

14           A.       (Reviewing.)

15                  Yes.

16           Q.       Do you see in Paragraph 25 it says that,  
17      "Lombardo, dissatisfied with these perceived affronts,  
18      became very negative and difficult to manage."

19                  What perceived affront is the paragraph  
20      referring to?

21           A.       Eli apparently was talking to the  
22      salespeople about his proposed changes and sales  
23      structure before he ran it by leadership for approval,  
24      so, apparently, he -- Mr. Lombardo knew -- knew about  
25      the potential changes, which were not enacted before he

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1 was terminated.

2 Q. And Eli? You are referring to Eli Auerbach  
3 who was a sales manager at Chmura at that time?

4 A. Correct. Correct.

5 Q. And is it your testimony that at the time  
6 Mr. Auerbach told Mr. Lombardo about this change, he  
7 didn't have permission to do that?

8 A. He did not have the approval. What he was  
9 sharing was not approved by leadership.

10 Q. What approval -- oh, the revision part?

11 A. Correct. Right. And, you know, one other  
12 thing, Christine, Mr. Lombardo was negative and  
13 difficult to manage not only at that point, but at  
14 prior times. He treated our accounting folks,  
15 Christine Steigmann, as if they were a second class  
16 citizen, to the degree Christine came just about crying  
17 to me one day because she was afraid that Rick was  
18 going to have her fired. I assured her that that kind  
19 behavior was not what Chmura stood for.

20 Q. So Mr. Lombardo was difficult -- well, I  
21 guess to restate that, he became very negative and  
22 difficult to manage, but I think your testimony is that  
23 he was already difficult to manage; is that correct?

24 A. That is correct.

25 Q. Now, this paragraph also states, "For

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1 example, when Lombardo did not receive a discretionary  
2 merit based salary increase in 2019, he became incensed  
3 and even falsified changes to a rescinded job offer  
4 letter from a third party to try to bully Chmura into  
5 increasing his salary." What's the factual basis for  
6 that statement?

7 A. The factual basis for that statement is the  
8 falsified letter, which was odd, or funny, in a bad  
9 sense, because you can see that certain letters, or  
10 certain words were not even in line with the text  
11 around it. It was clear that the date was changed.

12 So when we received this letter, of course,  
13 the name of the offering company was taken off. Leslie  
14 and I talked about it, and it became apparent to us  
15 very quickly who that company was, someone that we were  
16 trying to work on a relationship with them being our  
17 vendor. And so Leslie picked up the phone, called the  
18 person and he acknowledged that, yes, he had offered  
19 Lombardo a job.

20 Interesting that it was probably at the  
21 IEDC the former year, which we spent a lot of money to  
22 send Mr. Lombardo to. And he assured Leslie that that  
23 offer was taken off the table at least a month prior to  
24 Lombardo trying to convince us that he had a high  
25 offer.

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1           Q.     What parts of the letter do you contend  
2 were falsified?

3           A.     The date, the amount of money. When he --  
4 the amount of time he had to give a response. I don't  
5 have the letter in front of me, but that's my  
6 recollection at this point.

7           Q.     Does Chmura currently have a relationship  
8 with GIS, that particular firm?

9           A.     It's strained, but, yes, we do.

10          Q.     Did GIS want to continue working with  
11 Chmura?

12           MR. SATTERWHITE: Object to the form.

13          A.     Yes, they do. Our data are very valuable.

14          Q.     Can you explain how the relationship is  
15 strained?

16          A.     There is a trust factor there. When  
17 someone offers an employee of yours a job, when that --  
18 that is not ethical, that's not the way we work. If we  
19 were to try to employ someone, or offer someone a job  
20 with, certainly, a customer of ours, we would do that  
21 very cautiously and not without talking to that  
22 customer first.

23          Q.     But Chmura is concerned about working with  
24 GIS; is that fair?

25          A.     Well, for the trust issue there now, but

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1       the real issue here is that we were given something to  
2       bully us to try to get a pay increase. We were lied  
3       to. It took -- it took several discussions.

4                  In fact, we went up to Cleveland, Leslie  
5       and I and Greg Chmura sat in the room for, I would say,  
6       it was about an hour with Leslie talking to  
7       Mr. Lombardo asking him if this was, in fact, a real  
8       offer, if he doctored it. And, finally, at the end of  
9       the conversation, he said to Rick, Rick, if -- I can't  
10      remember his last name -- when you and your wife have a  
11      son and he comes to you and he lied, are you going to  
12      just let him lie, or are you going to address that?

13                 And then she took the piece of paper,  
14       pushed it over to Rick and said, Rick, let me give you  
15       one more chance, has this been doctored? And he said,  
16       yes.

17                 Q.       Did Mr. Lombardo -- go ahead.

18                 A.       We originally were -- went up there to fire  
19       him because of that.

20                 Q.       But you, ultimately, didn't fire him at  
21       that point, correct?

22                 A.       No, we did not. Leslie said, Rick's a bad  
23       boy, but he is my bad boy, and I am going to help him.

24                 Q.       In your offer letter of employment,  
25       Mr. Lombardo was entitled to annual merit increases,

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1 correct?

2 MR. SATTERWHITE: I am going to object to  
3 the form. If you are talking about a specific  
4 document, we will be glad to look at it.

5 A. No one in this world is entitled to annual  
6 merit increases, not even me.

7 Q. I am going to show you what's been marked  
8 Defendant's Exhibit E.

9 - - - - -  
10 (Thereupon, Previously Marked  
11 Deposition Exhibit E, Copy Copy of  
12 Letter Dated 2/3/15 to Richard  
13 Lombardo, Bates CHMURA000097, was shown  
14 for purposes of identification.)  
15 - - - - -

16 Q. I will let you control and take a look at  
17 that.

18 A. (Reviewing.)

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. What is it?

22 A. It's an offer letter, I believe.

23 Q. And you will see right there in the center  
24 it says, "After three months of employment, you will  
25 also be eligible for annual merit increases upon

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1 approved performance by your management." Do you see  
2 that?

3 A. I sure do.

4 Q. Did Mr. Lombardo request an annual merit  
5 increase during his employment there?

6 A. Multiple times.

7 Q. And did he ever receive one?

8 A. I believe he did one year. It wasn't a  
9 merit increase. It was a cost of living increase. He  
10 was compensated very well, and our expectation was that  
11 he would be getting higher salary or higher pay as he  
12 was successful as a salesperson.

13 Q. Going back to the Paragraph 25 of  
14 Exhibit D. Now, what you called a falsified letter,  
15 that occurred in March of 2019, correct?

16 MR. SATTERWHITE: Sorry, Christine. You  
17 broke up a little bit on our end.

18 Q. Sure. The letter you referred to you said  
19 Lombardo, according to you, falsified, that incident  
20 occurred early 2019, correct?

21 A. Correct.

22 Q. Was it in -- do you recall what month that  
23 happened?

24 A. It was either February or March. It was  
25 cold in Cleveland.

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1           Q.     So that was well before Mr. Auerbach talked  
2        to Mr. Lombardo about the change or revising the  
3        commission structure, correct?

4           A.     Correct.

5           Q.     I want to turn to Paragraph 30 and 31 of  
6        the Amended Complaint in Exhibit D.

7           A.     (Reviewing.)

8                   Yes, I have read 30 and 31.

9           Q.     Paragraph 30 says, "Second, Lombardo  
10      threatened to accept a position with one of Chmura's  
11      competitors, in violation of the Agreement." What is  
12      the factual basis for that sentence?

13           A.     Okay. And going on it says, "Lombardo  
14      indicated that this was not an idle threat because he  
15      had already discussed employment with at least one  
16      competitor." And we have a letter from EMSI where --  
17      once again, here this is Rick lying whenever it suits  
18      his purpose. So we have a letter from EMS that Rick  
19      spoke to someone at that IEDC event; again, the event  
20      that we pay all this money to attend where he is  
21      supposed to bring us a return on investment from that.

22                   So Rick met with someone from IEDC and was  
23      trying to talk to that person about whatever -- being  
24      available to work there. So, clearly, EMSI did not  
25      offer him a job, as he said that they did, but -- so

1       the fact of the matter is, we have an email that  
2       validates this.

3           Q.     What is the date of that email?

4           A.     It was right after the conference, so it  
5       was upwards towards October. I believe the email  
6       probably was dated whenever the conference ended,  
7       October 2019 thereabout.

8           Q.     What's the substance of the -- the  
9       substance of that email?

10          A.     Rick was trying to meet with the -- get a  
11       phone call with the EMSI guy.

12          Q.     Does the email say anything about  
13       employment?

14          A.     I don't recall that.

15          Q.     To your knowledge, did Mr. Lombardo ever  
16       accept a position with one of Chmura's competitors?

17          A.     Not to my knowledge.

18          Q.     Paragraph 31 states that, "Third, Lombardo  
19       threatened to contact all of Chmura's clients, despite  
20       the Agreement's non-solicitation provisions, so that he  
21       could persuade them to take their business elsewhere."

22               What's the factual basis for that  
23       statement?

24          A.     He made that statement to Auerbach. He  
25       made that statement as well to other employees.

1 Q. What other employees?

2 A. I believe, at least, Stephanie. I am not  
3 sure who else.

4 Q. What's Stephanie's last name?

5 A. Is it Wiley? I am not good with names. I  
6 do well to get every one's first name right. But she  
7 is in Cleveland. Sorry.

8 Q. To your knowledge, did Mr. Lombardo contact  
9 any of Chmura's clients to persuade them to take their  
10 business elsewhere?

11 A. Not to my knowledge at this point.

12 Q. I want to turn to Paragraph 34 of the  
13 Complaint, the Amended Complaint of Exhibit D.

14 A. (Reviewing.)

15 Okay.

16 Q. Paragraph 34 states that, "In that letter,  
17 you made several requests to enable it to secure both  
18 its confidential information and its customer  
19 relationships." Do you see that?

20 A. Yes.

21 Q. What letter is that referring to?

22 A. Paragraph 33 might provide it.

23 Oh, it's the separation contract, the cease  
24 and desist letter. That's the letter.

25 Q. And do you know when that cease and desist

1 letter was sent?

2 A. That would have been probably a day or two  
3 after we told him to go home and not come back until he  
4 heard from leadership.

5 Q. Who sent the letter to Mr. Lombardo?

6 A. I believe counsel would have sent that  
7 letter, but I'm not sure.

8 Q. Other than that letter, were any other  
9 requests made?

10 A. I'm sorry, were any other what's made?

11 Q. Requests, that are referenced in Paragraph  
12 34, made to Mr. Lombardo?

13 A. Certainly, Mr. Auerbach requested that the  
14 computer be returned previously.

15 Q. Do you know when Mr. Auerbach made that  
16 request?

17 A. Not off the top of my head, but I believe  
18 it's in his affidavit.

19 Q. Other than the letter, the cease and desist  
20 letter and the request my Mr. Auerbach, were there any  
21 other requests made, to your knowledge?

22 MR. SATTERWHITE: Object to the form.

23 A. Not that's coming to my mind right now.

24 Q. Did Mr. Lombardo ultimately return the  
25 computer?

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1           A.     Ultimately, but the names were so stale, we  
2     were not able to get any value out of it.

3           Q.     Do you recall when Mr. Lombardo returned  
4     that computer?

5           A.     I believe it was sent as a Christmas gift.

6           Q.     Around December 25th; is that correct?

7           A.     That's correct.

8           Q.     Turn to Paragraph 37 and take a look at  
9     that.

10           MR. SATTERWHITE: Did you say 37?

11           MS. COOPER: I did. I did.

12           A.     (Reviewing.)

13           I'm done reading it.

14           Q.     Paragraph 37 states, "Further, despite  
15     specific requests, Lombardo also failed to return a  
16     Chmura computer which contained customer contacts,  
17     pricing data, and other highly confidential Chmura  
18     information." Do you see that?

19           A.     Yes.

20           Q.     How were -- when you received one of those,  
21     how was the customer contact -- let me rephrase that.

22           How were custom contacts stored on the  
23     computer?

24           A.     They were stored in an Excel document.

25     They were also stored in his Outlook -- his mail.

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1           Q.     Was the Excel document you are referring to  
2     on his desk top, his document folder? Where was it on  
3     the computer?

4           A.     That information I don't have. We never  
5     looked at the computer, but the counsel has taken care  
6     of that and sent information to us from the laptop.

7           Q.     What about pricing data? How was the  
8     pricing data stored?

9           A.     That was most likely in an Excel  
10    spreadsheet, our pricing spreadsheet.

11          Q.     You said most likely. Do you know for sure  
12    how it was stored?

13          A.     Well, that is how it was stored. I don't  
14    know if he took it out of the Excel sheet and copy and  
15    pasted it into a Word document or PowerPoint. I don't  
16    know what he did with it. In any case, it was there.

17          Q.     Do you have a Word document that shows he  
18    copy and pasted any information?

19          A.     No, I don't. I was just saying it could  
20    have been in one of those forms, but my recollection is  
21    that it is an Excel document. I guess the form doesn't  
22    matter. The fact that it was there is what's  
23    important.

24          Q.     But those documents were there on a  
25    computer issued by Chmura, correct?

1           A.     That's correct.

2           Q.     What other highly confidential information  
3 does Paragraph 37 refer to?

4           A.     Well, he had -- in all of his emails, he  
5 had licenses. He had names of customers. He had the  
6 dollar amount of their contract. He had information  
7 about our road map, things that we're adding to JobsEQ  
8 that we wouldn't want our competitors to know about.

9           Q.     Mr. Lombardo was placed on unpaid leave,  
10 correct?

11          A.     Correct.

12          Q.     Do you recall when he was placed on unpaid  
13 leave?

14          A.     Again, I don't have that date in front of  
15 me. That's one I should have looked up to have, but I  
16 don't have that. It was in October. October 2019.  
17 Correct.

18          Q.     When he was placed on unpaid leave, what  
19 actions were taken to procure his computer?

20          A.     When he was -- when we made a phone call --  
21 when we learned how belligerent Mr. Lombardo was being,  
22 we asked Eli to walk him out of the office and tell him  
23 not to come back until leadership discussed it. At  
24 that very moment, his access to JobsEQ was shut off.  
25 His ability to get into any Chmura software was cut

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1 off. And, of course, the reason for this was because  
2 he was out of control, belligerent, and there was no  
3 way for us to know what he would do next.

4 Q. Chmura uses Office 365, correct?

5 A. I believe so.

6 Q. Did Chmura turn off access to Office 365?

7 A. That would be a question for John Chmura,  
8 but --

9 Q. Did -- and this may be a question for John  
10 as well, so just tell me if it is. Did Chmura have any  
11 software on the computer where it could log in remotely  
12 to that computer?

13 A. Yes, that will be John Chmura.

14 Q. I will ask those questions of him, then.

15 If you look at paragraph -- just read  
16 through Paragraph 38.

17 A. (Reviewing.)

18 Yes.

19 Q. This paragraph also references the notes on  
20 the computer that you testified about earlier, correct?

21 A. Correct.

22 Q. Were the prospective customers that  
23 attended those conferences be available to others to  
24 speak to as well?

25 MR. SATTERWHITE: We object to the form.

1 Go ahead.

2 A. Would the prospective customers be  
3 available to others to speak to as well? The answer  
4 is, yes, but you can't speak to someone if you don't  
5 know who their name is. And we didn't have the names  
6 of any of those people. They were --

7 Q. Did you have any -- sorry. Were there --

8 MR. SATTERWHITE: Were you finished your  
9 answer?

10 A. I am finished. Go ahead.

11 Q. Were Chmura competitors at the IEDC  
12 conference?

13 A. Yes, recall that Rick spoke to EMSI looking  
14 for -- being available for a job. This is where he  
15 claims that they offered him a job. He claimed that  
16 when he was leaving the company, the day he was so  
17 disgruntled.

18 Q. But you have no basis for believing that he  
19 was actually offered a job by EMSI, correct?

20 A. No, oftentimes, Rick lied, as we found.

21 Q. With respect to that -- well, in Paragraph  
22 38, the third line from the end, it says that the  
23 computer notes from those two conferences summarized  
24 terms relating to Chmura's prospective relationship.  
25 What is the summarized terms that this paragraph refers

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1 to, if you can just describe it for me?

2 A. (Reviewing.)

3 Well, what we typically do is whoever is in  
4 charge taking notes will have the name of the person,  
5 would have who they work for, and then will have some  
6 notes such as: I gave Mr. So-and-So a demo of about 10  
7 to 15 minutes. They were very impressed with certain  
8 analytics. He asked us to follow up with him next week  
9 to provide a full demo.

10 Q. If you could, turn to Paragraph 63 of  
11 Exhibit D.

12 MR. SATTERWHITE: You did say 63, right?

13 MS. COOPER: I did, yes.

14 A. (Reviewing.)

15 Okay. Yes.

16 Q. Can you explain -- it states, "Further, it  
17 would be inequitable for Lombardo to benefit from his  
18 threatened breaches by diverting Chmura' customers to a  
19 competitor during the restricted period."

20 What benefit did Mr. Lombardo obtain?

21 MR. SATTERWHITE: Object to the form.

22 A. Well, he threatened to sell our customer  
23 client lists. The benefit to him --

24 Q. How did Mr. Lombardo -- I'm sorry. I  
25 didn't mean to cut you off. I wasn't looking at the

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1 video. Go ahead.

2 A. The benefit to him would be the sales  
3 price.

4 Q. But how did he benefit by having the sales  
5 price?

6 MR. SATTERWHITE: Same objection.

7 THE WITNESS: Can we go further back up? I  
8 want to see what this is with regard to.

9 MR. SATTERWHITE: Yeah. Where do you  
10 want --

11 THE WITNESS: Is there like a statement at  
12 the top of this?

13 MR. SATTERWHITE: (Indicating).

14 THE WITNESS: Okay, Declaratory Judgment.  
15 Okay.

16 (Reviewing.) All right. Paragraph 63?

17 MR. SATTERWHITE: She is asking you about  
18 63.

19 A. It was a threatened breach. We do not know  
20 if he benefitted or not. Again, Rick is not one to be  
21 honest.

22 Q. Do you have any basis for believing that  
23 Mr. Lombardo, in fact, diverted customers to a  
24 competitor during the restricted period?

25 A. Not at this point in time.

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1           Q.     Other than -- and we will get to this in  
2 more detail later, but other than attorneys fees, does  
3 the first Amended Complaint seek any monetary relief?

4           MR. SATTERWHITE: Objection to form.

5           Q.     If you go to Page 14 and take a look at  
6 Page 14.

7           A.     Now, where on Page 14 are we looking?

8           Q.     My question -- whatever you need to look  
9 at, my question is, does the Amended Complaint seek  
10 monetary -- any monetary relief other than attorneys  
11 fees?

12          A.     That's a question for our counsel here. I  
13 am not an attorney, so I don't know how to answer that.

14          MS. COOPER: I am going to move way from  
15 this exhibit. If we could, take a short restroom  
16 break.

17                        - - - - -

18                        (Short break off the record.)

19                        - - - - -

20          MS. COOPER: Back on the record.

21 BY MS. COOPER:

22          Q.     I am going to close Exhibit D and go back  
23 to Defendant's Exhibit A which is an exhibit to the  
24 deposition. You were also designated to testify  
25 regarding Item Number 3, "The damage allegedly

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1 sustained by Chmura as a result of Mr. Lombardo's  
2 purported actions"; is that correct?

3 A. Correct.

4 Q. Can you tell me, what is each type of  
5 damage that Chmura is seeking?

6 A. The damages that we refer to as that  
7 greater than 100,000 that we already discussed: The  
8 five demos, or five contracts that we should have  
9 gotten, at least, out of the IEDC and the Texas event,  
10 times 8,000 average selling price, 40,000; then present  
11 value of that four years from -- with a 2% discount  
12 rate, and then some function about non-renewal.

13 Q. Are there any other damages you are seeking  
14 against Mr. Lombardo?

15 A. The attorneys fees that are relative to the  
16 Confidentiality Agreement breach.

17 Q. Anything else? Any other damages?

18 A. Not at this point.

19 Q. You have also been designated to talk about  
20 "The calculation of each element of damage allegedly  
21 sustained by Chmura as a result of Mr. Lombardo's  
22 purported actions," Item Number 4 on the Notice of  
23 Deposition, Exhibit A, correct?

24 A. Correct.

25 Q. And you have taken me through the

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1 calculation, but I'd like you to slow it down for me.  
2 It's hard to get it all down. What is the specific  
3 amount of damages that Chmura is seeking with respect  
4 to those five contracts?

5 A. Well, you know, in addition to --

6 MR. SATTERWHITE: Object to the form. Go  
7 ahead. Sorry.

8 A. In addition to that, we have, you know, the  
9 \$25,000 that we pay to be a sponsor. So when we go to  
10 these conferences and we get names and we follow-up on  
11 them because they ask to do a demo, our historical demo  
12 rate is about 24%. So I looked at the number of people  
13 who requested a demo, and then we assume that 24% would  
14 become a licensee. So that turned out to be five. But  
15 8,000 is the average selling price. The 8,000 times  
16 five I believe is 40,000. So in year one, we had  
17 \$40,000. In year two, we take that present value based  
18 on 2% inflation rate.

19 Q. What is that present value?

20 A. I'm sorry?

21 Q. What is the present value? Can you explain  
22 that for me?

23 A. The present value is a financial term to  
24 identify what a future string of earnings is worth  
25 today.

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1 Q. So you have \$40,000 in year one?

2 A. Yes.

3 Q. What is the present value dollar amount for  
4 year two?

5 A. For the second year, the formula of present  
6 value equals the -- you know, the 40 thousand divided  
7 by 1 plus .02, in the parentheses, raised to the second  
8 power. In the third year, you raise it to the third  
9 power, et cetera. Then you use some --

10 Q. So what is the sum of those numbers?

11 A. The number I gave earlier, I believe, was  
12 197-\$198,000. Now, we are very conservative on this.  
13 We are very conservative. We could have used more  
14 years, but we just used four years because the bulk of  
15 our customers we've gotten in the last four years.  
16 But, certainly, we have customers that have been with  
17 us for 10 or 15 years, so we could have justified using  
18 a much longer period of time, which would have made the  
19 value higher.

20 Q. That \$8,000 average selling price that the  
21 calculation is based, is that the same price that would  
22 have been paid in year two and year three and year  
23 four?

24 A. That's a good point. It would have been  
25 higher because you raise it by the cost of living every

Page 51

1 year. So we -- you just pointed out an error that  
2 caused this number to be lower than it should have been  
3 otherwise. We can correct and revise.

4 Q. My question is, is the renewal price the  
5 same --

6 A. No --

7 Q. -- as the sales price?

8 A. No, every year the renewal point goes up to  
9 reflect the cost of living. So I can't remember right  
10 now if it was 2% or 3% that we used. So every year --  
11 if you paid 8,000 the first year, the next year you pay  
12 8,000, you know, times 1.02. So it would be 8,000, you  
13 know, 2 or 300, whatever.

14 Q. To your knowledge, have you produced the  
15 documents that you are relying on for this calculation  
16 in Discovery?

17 A. Yes. Yes.

18 Q. Can you tell me specifically what those  
19 documents were -- or are?

20 A. It's an Excel spreadsheet. That's, at  
21 least, what I provided. I would expect that's what was  
22 sent on to you.

23 MS. COOPER: Rod, can you confirm that that  
24 spreadsheet was sent and provided?

25 MR. SATTERWHITE: I cannot confirm sitting

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1 here today, but I will certainly check on it.

2 MS. COOPER: If you would, that would be  
3 great.

4 MR. SATTERWHITE: Sure.

5 BY MS. COOPER:

6 Q. Dr. Chmura, the numbers that you -- well,  
7 let me ask this, did you create that Excel spreadsheet  
8 you are referring to?

9 A. Greg created that Excel spreadsheet for me.

10 Q. I'm sorry, who did?

11 A. Greg Chmura created the Excel spreadsheet  
12 for me.

13 Q. And was that at your direction?

14 A. Yes.

15 Q. Did you tell him how to do the calculation?

16 A. No, it's a simple thing, and Greg is a very  
17 smart guy. He has a degree in math and physics, a dual  
18 degree that he got in three years. The present value  
19 is a simple concept that any financial person would  
20 use.

21 Q. What documents were relied on to create  
22 that spreadsheet? I want to know what information was  
23 relied on to make that spreadsheet?

24 A. Well, the beginning documents were  
25 eventually what we got from the computer that Rick was

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1 holding on to. So it was several pages of notes from  
2 the two conferences we referred to.

3 Q. Do you know if those notes were produced in  
4 Discovery?

5 A. Sorry, can you say that in English?

6 Q. Did you turn over those notes to  
7 Mr. Lombardo's counsel?

8 A. Well, they were on Mr. Lombardo's computer.  
9 I would think that they were turned over to you.

10 Q. Now, you indicated that in your  
11 calculation, you used 24% for the demo rate coming out  
12 of a conference; is that correct?

13 A. We used 24% at -- if we give the -- based  
14 on the number of people that sign up for a tool, that  
15 have seen a demo, yes, 24%.

16 Q. What information did you use to come up  
17 with that number, that percent?

18 A. We are a data company, and so we keep track  
19 of all of our sales, all of the demos. And we have a  
20 running rate of the demo-to-sales rate.

21 Q. How is that tracked? In what program is  
22 that tracked?

23 A. That is something that Greg Chmura does. I  
24 would -- I would expect he has an Excel file where he  
25 is pulling that data into.

1 Q. So what is he pulling it from?

2 A. Probably out of Salesforce.

3 Q. Do you know how many people that ask for a  
4 demo from a sales conference actually end up getting a  
5 demo or having a demo?

6 A. No. I do know that at the last IEDC event  
7 we went to -- I was looking at some data -- we didn't  
8 have as many people there, and there were several.  
9 Whenever I give a presentation, it would -- you know, a  
10 primary opens a session, that typically bumps up the  
11 number of people that end up asking for a demo and  
12 buying the product, licensing the product.

13 Q. The 8,000 average selling price that you  
14 used in this calculation -- that was used in this  
15 calculation, what documents did Chmura use to come up  
16 with the \$8,000 average selling price?

17 A. Similar to what -- we take all this data,  
18 so similar to us getting the demo-to-sale ratio, we  
19 keep track of all of the sales over time, as well as  
20 per month.

21 Q. And is that information also kept in  
22 Salesforce as well?

23 A. I would expect that some of it is in  
24 Salesforce, but I would expect that Greg pulled that  
25 out and had an Excel sheet that he keeps it in because

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1       when he gives us his monthly sales team meeting, he  
2       shows us historically what it looks like, so. It is  
3       also in Excel.

4           Q.     And why was the rate of 2% used in the  
5       present value determination?

6           A.     Well, that's a good question, and we could  
7       use it -- you can argue different rates. 2% is about  
8       the rate of inflation, so that would be one likely  
9       choice. Another choice would be if you put the money  
10      in a bank, what would be the interest rate you'd get?

11          Q.     Do you know whether Chmura had turned over  
12      the Salesforce documentation that went into this  
13      calculation, over to Mr. Lombardo -- or counsel for  
14      Mr. Lombardo?

15          A.     I would expect that that has not been.

16          Q.     And do you know why it wouldn't have been?

17          A.     Because you didn't ask for it? I'm not  
18      sure.

19          Q.     Are there any other damages calculations --  
20      sorry.

21                   We covered the damages that Chmura is  
22      taking. Is Chmura taking any other -- we talked about  
23      attorney fees, and we talked about the \$198,000. Are  
24      there any other damages that Chmura is seeking?

25                   MR. SATTERWHITE: Object --

1                   Withdraw the objection. Go ahead.

2                   A. Well, I guess that would be a discussion  
3                   that would have to have with our counsel if, you know,  
4                   we go over and end up in court.

5                   Q. Dr. Chmura, you were designated as the  
6                   witness to speak about the damages sustained by Chmura  
7                   and the calculation of each damage; therefore, I will  
8                   ask again. Other than the \$198,000 that you already  
9                   testified to and the attorneys fees, are there any  
10                  other monetary damages that Chmura is seeking, as you  
11                  sit here today?

12                  A. As we sit here today, no.

13                  Q. I am going to move into the customer list,  
14                  the two customer -- not -- sorry, the two conference  
15                  notes that had lists of potential customers on them.  
16                  Do you recall what customers, or potential customers,  
17                  were listed on those conference notes?

18                  A. There were like 50 names. I don't recall.  
19                  I read it maybe two weeks ago.

20                  MR. SATTERWHITE: I will just note an  
21                  objection for the record. We objected to that category  
22                  for that very reason, that she doesn't need to be  
23                  expected to memorize customer names at that volume.

24                  Q. Was that 50 names per conference or 50  
25                  names total, roughly?

1           A.     If we are talking total -- I don't want to  
2     to guess, but it -- I don't want to guess. I want to  
3     go back and look at it fully.

4           Q.     Did any of the customers, or potential  
5     customers on that list, enter into a subscription  
6     agreement or a license agreement with Chmura?

7           A.     There was one that I mentioned earlier that  
8     walked up to Rick and said that -- asked Rick to send  
9     the agreement for him to sign. So that indicated to me  
10    that it was a sale that came outside the IEDC. I did  
11    not include that as one of those that we did not get.

12          Q.     So that was not included in your  
13    calculation that we just went over?

14          A.     That's correct.

15          Q.     And can you explain the reason for that  
16    again, why it wasn't included?

17          A.     Because that was the not honest. That  
18    client -- it was clear that Rick already had a  
19    relationship with that client and had been working with  
20    that client, had given that client a demo prior to the  
21    conference, and he was at the point where he was ready  
22    to sign. But just because he walked up to the  
23    conference booth then, Rick put his name on the list  
24    and did not think they were for us to suggest that that  
25    wasn't attributed to him, or that it was attributed to

1 the conference, not to him.

2 Q. So in discriminating which potential  
3 customers to include, did you review each individual  
4 one?

5 A. Did I -- I'm sorry, did I review each  
6 individual what?

7 Q. Review potential customer on the list  
8 before including it in your calculation?

9 A. Yes, I read that -- I read that list myself  
10 and identified which ones wanted a demo, and then we  
11 gave it to the salespeople to follow-up with.

12 Q. And how did you determine which ones to  
13 include in your calculation?

14 A. They said, "Please call me back next week  
15 to give me a demo," or "Please call me in one month to  
16 give me a demo."

17 Q. And upon receiving those customers notes,  
18 did anyone from Chmura follow-up with those potential  
19 customers?

20 A. Yes.

21 Q. And have any of those potential -- other  
22 than the ones that we talked about, any of those other  
23 potential customers entered into any contract with  
24 Chmura?

25 A. Not that I know of at this point in time.

1       In fact, most of them wouldn't even return our phone  
2       calls.

3           Q.     Do you know how frequently they were  
4       called? Let me rephrase that.

5                   Do you know how frequently they were  
6       contacted by Chmura after the notes were received?

7           A.     We call -- again, if this was an October  
8       conference, we got it at the end of December. Our  
9       counsel had to make sure it was properly prepared for  
10      us, so we got the list maybe mid January, pretty stale,  
11      and they were contacted more than once.

12          Q.     You were designated as the witness to  
13       testify to Topic Number 6, "Closing ratios for each  
14       account manager, senior account manager or other sales  
15       representative of Chmura from February 2015 through  
16       December 31, 2019"; is that correct?

17          A.     I don't recall being designated for that  
18       one. That sounds more like Leslie Peterson.

19          Q.     Okay. Let me show you -- while I am  
20       opening up another exhibit, I will ask you a follow-up  
21       question to one of my prior questions. Do you know how  
22       many contacts it typically takes to secure a demo?

23          A.     How many contacts?

24          Q.     Yes. How many contacts would it take from  
25       an initial contact to that contact asking for a demo?

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1 MR. SATTERWHITE: Object to the form.

2 A. It could take multiple contacts. It could  
3 take years to get a client. For example, there are  
4 some people that we have been talking to for 10, 15  
5 years and then they finally decide to get a license.

6 Q. I am going to show you what's been marked  
7 Defendant's Exhibit B.

8 - - - - -

9 (Thereupon, Deposition Exhibit B, Copy  
10 of Plaintiff's Designations and  
11 Objections to Richard Lombardo's Notice  
12 of Deposition, was marked for purposes  
13 of identification.)

14 - - - - -

15 A. (Reviewing.)

16 Do you want us to scroll to something?

17 Q. Yeah, you can go ahead and scroll through  
18 and take a look at this.

19 A. Okay.

20 MR. SATTERWHITE: (Indicating). I am just  
21 guessing this is what she is going to ask you about.

22 MS. COOPER: Yes, that's where I am going.

23 Q. Have you seen this document before?

24 A. Oh, yes.

25 Q. And Exhibit B is, "Plaintiff's Designations

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1 and Objections to Richard Lombardo's Notice of  
2 Deposition, Pursuant to Federal Rule Civil Procedure  
3 30(b) 6", correct?

4 A. So closing ratio is what I have been giving  
5 to you, that's 24%. Of those people that we demo, on  
6 average 24% of them end up getting a license or  
7 requesting a license.

8 Q. You are a little ahead of me. You are a  
9 little bit ahead of me. You answered the question I  
10 was going to ask, but let me ask the question and you  
11 give me the answer, if you don't mind.

12 So the closing ratio, you will see, you  
13 were designated as to the limited portion of Topic  
14 Number 6, "Closing ratios for each account manager,  
15 senior account manager or other sales representative of  
16 Chmura from February 2015 through December 31, 2019",  
17 correct?

18 MR. SATTERWHITE: Object to the form. I  
19 mean, I don't understand the question. She was  
20 designated by a more limited basis than what you just  
21 read, and maybe I just misheard you. But she has  
22 agreed to testify with respect to the overall ratio,  
23 not with respect to individual account managers.

24 MS. COOPER: Correct.

25 BY MS. COOPER:

1           Q.     So, Dr. Chmura, you were designated to  
2 testify to a limited portion of -- or a limited scope  
3 of Topic Number 6, correct?

4           A.     Yes.

5           Q.     And it is your testimony that the 24%  
6 figure that we have discussed is the closing ratio for  
7 customers who request JobsEQ demos; is that correct?

8           A.     Correct. It varies over time, but that is  
9 the average.

10          Q.     And over what period of time did you look  
11 at -- or did Chmura look at to come up with that 24%?

12          A.     From what I am seeing in mind is at least  
13 one year. Could be two years.

14          Q.     And what did you look at?

15          A.     Well, hold on, let me think. Let me think.  
16 I believe it's over, like, the past four years. That's  
17 my recollection.

18          Q.     And that would have been over the four  
19 years that Mr. Lombardo was employed at Chmura,  
20 correct?

21          A.     That would include that period.

22          Q.     And would it also include the period of  
23 time Austen Steele was employed at Chmura?

24          A.     Yes.

25          Q.     Can you explain to me the difference

1       between an account manager and a senior account  
2       manager?

3           A.       A senior account manager has been there  
4       longer than an account manager and probably has more  
5       experience.

6           Q.       Upon Mr. Lombardo's termination, did  
7       Chmura have any senior account managers?

8           A.       I believe Wilson Cox was a senior account  
9       manager.

10          Q.       Do you know, and this is not going to  
11       topic, but do you know how many account managers Chmura  
12       had upon Mr. Lombardo's termination?

13          A.       I believe four.

14          Q.       When did -- or has -- has Chmura hired any  
15       new account -- {audio distortion}.

16                   (Reporter asked for clarification).

17                   Since Mr. Lombardo's termination, has  
18       Chmura hired any new account managers?

19                   MR. SATTERWHITE: Object to the scope.

20          A.       I believe we've hired two.

21          Q.       Do you know the current number of account  
22       managers that Chmura has?

23          A.       I believe --

24                   MR. SATTERWHITE: Same objection.

25          A.       I believe we have six.

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1 Q. Do you know -- let me strike that.

2 What is the overall renewal ratio for  
3 JobsEQ?

4 A. It's about 83%, but it varies based on how  
5 long they have been with us.

6 Q. What is -- over what period of time is that  
7 83% calculated?

8 A. That's been holding up for at least the  
9 last couple of years.

10 Q. What period of time are you looking at to  
11 come up with that 83% figure? Is it each year? Is it  
12 over the history of the company?

13 A. No, 2019/2018. And, again, it varies  
14 because if someone has been with us for three years,  
15 then the ratio of them staying is higher, than the  
16 average --

17 Q. The average is 83%. Do you know what the  
18 ratio is for those customers that is over three years,  
19 or three years and above?

20 A. I don't have that in my mind.

21 Q. How about for two years?

22 A. I don't have that in my mind.

23 Q. I'll ask one year as well.

24 A. 83% is the average.

25 Q. I want to go to Topic Number 14. If you

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1 look at Exhibit A -- you can look at Exhibit A or B,  
2 but we will look at Exhibit A.

3 A. (Reviewing.)

4 Q. Tell me when you are ready.

5 A. I'm ready.

6 Q. Topic Number 14 is, "Classification of  
7 decisions related to the classification of account  
8 managers and senior account managers prior to, during  
9 and after Mr. Lombardo's employment at Chmura,  
10 including the information and/or advice considered by  
11 Chmura in classifying account managers and senior  
12 account managers as exempt or non-exempt, and the  
13 factors considered."

14 You are designated as the corporate  
15 representative to testify on this topic, correct?

16 A. Correct.

17 MR. SATTERWHITE: I am going to object. We  
18 limited it.

19 Q. Okay. It was limited by counsel to,  
20 "Decisions following Mr. Lombardo's departure are not  
21 relevant to the claims or counterclaims in this  
22 litigation". However, you are still designated as the  
23 corporate representative for decisions made prior.

24 During the time of Mr. Lombardo's  
25 employment, how were account managers classified? Were

1       they classified as exempt or non-exempt?

2           A.       They were classified as exempt for most of  
3       them.

4           Q.       And what about senior account managers?

5       How were they classified?

6           A.       The same.

7           Q.       Why did Chmura classify account managers  
8       and senior account managers exempt?

9           A.       Because we saw them no different than we  
10      saw the economists, the data scientists, the computer  
11      technicians. They are professionals who we require  
12      them to have a B.S. Degree, so they are not someone  
13      that comes off the street from high school and can  
14      sell, you know, vacuum cleaners. This is someone that  
15      takes three to six months to learn JobsEQ.

16                  They get a lot of training, and they sell  
17      to a very sophisticated audience, and they provide a  
18      lot of input. There is a person between us and the  
19      client, and we tell them that you need to have your  
20      best foot forward because you often are the first face  
21      of Chmura Economics & Analytics. They bring  
22      information to us from the client; for example, what  
23      sort of analytics that they like, what needs to be  
24      added.

25                  They get very involved in conferences.

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1 They tell us which conferences that we should be  
2 attending. Once they have gone to them, they come back  
3 and give us feedback.

4 They are -- they make a lot of  
5 contributions. They look at our marketing material.  
6 They make suggestions on marketing. They make their  
7 suggestions on strategies.

8 Early on, Economic Development and  
9 Workforce were some of the biggest areas of our  
10 clients. Our competitor, EMSI, started out in the  
11 education sector, and Mr. Lombardo refused to -- he had  
12 the ability to choose which markets he wanted to try to  
13 sell into, and he refused to market to education  
14 because he felt that our tool would not par with EMSI.  
15 And so he continued to give us some feedback, and we  
16 added a lot of analytics in that regard, to the degree  
17 that we are now making great progress on the education  
18 vertical.

19 Q. Do you know where that feedback came from?

20 A. I'm not sure what you mean.

21 Q. Was Mr. Lombardo simply passing on what he  
22 heard from Chmura customers?

23 MR. SATTERWHITE: Object to the form.

24 A. We expected him to provide feedback from  
25 the customers. We have a road map, so that is product

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1       that we are adding to JobsEQ. And it was very  
2       important for our account managers to obtain  
3       information so that we could add it to the road map.

4                   And every time another person asked for it,  
5       we got another check. So if plenty of people asked for  
6       us to add block level data, then we pushed that higher  
7       up on the road map than, say, changing our colors from  
8       blue to green for only one person.

9                   Q.     So you were counting on feedback from  
10      outside sources, persons outside of Chmura, to make  
11      those decisions, correct?

12                  A.     Correct.

13                  Q.     Did Chmura rely on any information in  
14      making the decision to classify account managers,  
15      senior account managers as exempt?

16                  A.     No.

17                  Q.     Did Chmura rely on the advice of counsel to  
18      make that decision?

19                  A.     No.

20                  Q.     What factors did Chmura rely on making the  
21      decision to classify the account managers and senior  
22      account managers as exempt?

23                    MR. SATTERWHITE: Object to the form.

24                  A.     Well, their duties. We saw them no  
25      differently than we saw someone who was a data

1 scientist.

2 Q. What degree does a data scientist require  
3 to be employed at Chmura?

4 A. A B.S. Degree. Sometimes it is a Master's,  
5 but a B.S. Degree.

6 Q. And are the job duties different for an  
7 account manager and senior account manager than for a  
8 data scientist?

9 A. Of course. The account manager is dealing  
10 with sales all day long, and the data scientist is  
11 dealing with numbers and programs.

12 Q. Just for my understanding, what does a data  
13 scientist do?

14 A. A data scientist would vary. They could  
15 look for standard deviations in errors in the JobsEQ.  
16 They would test JobsEQ to see if there are any issues  
17 with it. They may -- they may write in blogs for us.  
18 Right now we are running a lot of the blogs from  
19 Covid-19 related to job postings.

20 Q. Were any members of -- sorry. Were any  
21 account managers or senior account managers ever  
22 classified as non-exempt prior to Mr. Lombardo's  
23 termination?

24 A. No.

25 Q. Did Chmura have any employees that were

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1       classified as non-exempt during Mr. Lombardo's  
2       employment?

3           A.       We had some interns who checked their time  
4       sheet, and if worked over 40 hours, would receive  
5       overtime.

6           Q.       Were there any other employees that were  
7       classified as non-exempt?

8           A.       Not to my knowledge.

9           Q.       Mr. Lombardo was classified as an exempt  
10      employee, correct?

11       A.       Correct.

12       Q.       Other than what you already testified to,  
13      did Chmura rely on any other information in making a  
14      decision to classify Mr. Lombardo as exempt?

15       A.       No.

16       Q.       Currently, how are your account managers  
17      classified?

18                  MR. SATTERWHITE: Object to the scope.

19       A.       Depends on their duties.

20       Q.       How do you determine which account manager  
21      is classified as exempt and classified as non-exempt?

22                  MR. SATTERWHITE: Object to the scope.

23       A.       Depends on their duties and their annual  
24      earnings.

25       Q.       Are there certain account managers that are

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1 currently classified as exempt?

2 MR. SATTERWHITE: Same objection. Do you  
3 just want to do a standing objection? She can answer  
4 in her individual capacity and I will be quiet that  
5 way.

6 MS. COOPER: Okay.

7 MR. SATTERWHITE: Go ahead.

8 A. Yes.

9 Q. I am going to Topic 18, "Employee handbook  
10 produced by Chmura in response to Mr. Lombardo's First  
11 Set of Document Requests Directed to Chmura." You have  
12 been designated as the corporate representative to  
13 testify on this topic. I am going to show you what's  
14 been marked as Exhibit Q.

15 - - - - -  
16 (Thereupon, Deposition Exhibit Q, Copy  
17 of Chmura Employee Handbook Dated  
18 7/19/2019, was marked for purposes of  
19 identification.)

20 - - - - -  
21 Q. You can go ahead and take a look at that.

22 A. (Reviewing.)

23 Okay, I am familiar with this.

24 Q. Okay. Give me a moment.

25 What is this document?

1 A. The employee handbook.

2 Q. And is it a true and accurate copy -- well,  
3 it is dated July 19, 2019, correct?

4 A. Correct.

5 Q. And is it a true and accurate copy of the  
6 handbook that existed as of July 19, 2019?

7 A. Yes.

8 Q. Were there other versions of the handbook  
9 prior to July 19, 2019?

10 A. I'm sure there were.

11 Q. Does Chmura maintain copies of those?

12 A. I don't have an answer to that.

13 Q. Did Mr. Lombardo sign an acknowledgment of  
14 receipt of this July 19, 2019 handbook?

15 A. My -- I believe he did, yes.

16 Q. And would that be in his personnel file?

17 A. I would expect it would be, but I haven't  
18 looked at his personnel file.

19 Q. I want to turn your attention to Page 5.  
20 It is marked Chmura 000053 at the bottom.

21 Let me ask the question before you get  
22 there. This handbook contains certain of Chmura's  
23 employment policies, correct?

24 A. Yes.

25 Q. Does this contain all of the policies for

1 Chmura?

2 MR. SATTERWHITE: Object to the form. Go  
3 ahead.

4 A. I'm not certain if it does.

5 Q. If you look at -- or scroll to the Travel  
6 Policy Section, take a look at that and let me know  
7 when you're ready.

8 A. Okay.

9 Q. It states that "All arrangements for  
10 airfare and hotel should be approved by your supervisor  
11 who will then send it outside of your department, i.e.,  
12 to the director of operations for final approval." Do  
13 you see that?

14 A. I certainly do.

15 Q. Who is the director of operations?

16 A. Sharon Simmons currently is.

17 Q. And was she the director during the time of  
18 Mr. Lombardo's employment?

19 A. Not entirely. Laura Leigh Savage preceded  
20 her.

21 Q. Did employees have to obtain approval prior  
22 to -- according to this, employees had to obtain  
23 approval prior to making travel arrangements, correct?

24 A. We can thank Mr. Lombardo for this one as  
25 well. So when you make policies, you can't make it for

1 just one person, but if you have one bad apple, you  
2 have to make sure everyone falls under the same policy.  
3 So Mr. Lombardo had the practice of wanting to make  
4 sure that his, I believe it was American Airlines,  
5 points were high so that, presumably, he could take  
6 vacations at a lesser cost.

7 So he would go out and get a ticket for  
8 \$400, as an example, when all other employees flying  
9 out of Cleveland were able to fly for 200. So,  
10 clearly, that's a practice that we like employees to,  
11 you know, fly at reasonable times, but we also expect  
12 them to not -- not take tickets that are excessive.

13 Q. Do you have any documentation showing that  
14 Mr. Lombardo booked flights that were more expensive  
15 than his --

16 A. Yes, I believe Sharon Simmons has the  
17 documentation.

18 Q. Was that documentation turned over in  
19 Discovery?

20 A. I don't believe you asked for it.

21 Q. When was the travel expenses change made to  
22 the employee handbook?

23 A. I don't know off the top of my head.

24 Q. Do you know what the prior language was  
25 before whatever change was made?

1           A.     There might not have been any prior  
2 language. It was, the account managers, the employees  
3 would book their own flights, period.

4           Q.     Did they use a company credit card to book  
5 -- get the flights?

6           A.     It depends on who they were. If they had a  
7 company credit card, we asked them to use a company  
8 card. And we have another interesting story around  
9 company credit card. So at that IEDC, this -- I think  
10 this is important because it gives you a sense of  
11 Mr. Lombardo's behavior and why we got to not trusting  
12 him.

13                 At that IEDC meeting, the last one that he  
14 was at, Eli went and took two or three account  
15 managers, new ones, that he wanted to learn. They  
16 stayed at, I believe it was, Embassy Suites. Eli was  
17 supposed to use the company credit card.

18                 And so it -- we come to find out that Rick  
19 put everyone's rooms on his credit card. Eli said, you  
20 can't do that, Rick. So Eli went to the front desk,  
21 gave them the Chmura credit card, had it all  
22 transferred to Chmura, and guess what? Mr. Lombardo  
23 came behind him and had it all switched to his card, so  
24 that, presumably, he could get some extra points on his  
25 personal card, not Chmura's card. So this is the kind

1 of behavior that is typical of Mr. Lombardo.

2 Q. Regardless of whether he did that or not,  
3 and I will ask if you have a factual basis for that in  
4 a moment, what harm did that do to Chmura?

5 A. What harm did that do to Chmura? Well, we  
6 certainly didn't get to collect our points. We have a  
7 Costco card, and just last year we received \$6,000  
8 because of rebates. So he stole our rebate.

9 Q. Was there a written policy that  
10 Mr. Lombardo had to -- or, account managers had to use  
11 the company card?

12 A. It might have been written, but they  
13 certainly had been told that. They were told that time  
14 and again. And just by virtue of the fact that Eli  
15 told Rick you can't put this on your personal card, you  
16 got to put it on the credit card of the company. Eli  
17 changed it to the credit card of the company and Rick  
18 came behind him and switched it back to his own  
19 personal card. What does that --

20 Q. Were you present when that happened?

21 A. I was not. I was staying at a different  
22 hotel.

23 Q. Were they staying at the conference hotel?

24 A. They signed up late, so it was an overflow  
25 conference hotel. The conference center was in the

1 middle of two hotels.

2 Q. Were you at the main conference hotel then?

3 A. I believe I was.

4 Q. I want to turn your attention to Page 7 in  
5 the Work Day section.

6 A. (Indicating).

7 Q. And just tell me when you are ready.

8 A. Okay.

9 Q. Does anything in this section prevent an  
10 account manager or senior account manager from working  
11 more than 40 hours per week?

12 A. This doesn't prevent anyone from working  
13 more than 40 hours a week.

14 Q. Okay. Were the account managers or senior  
15 account managers prevented from working more than 40  
16 hours a week, including Mr. Lombardo?

17 A. No. No.

18 Q. I want to show you what's been marked  
19 Defendant's Exhibit S, as in Sam.

20 - - - - -

21 (Thereupon, Deposition Exhibit S, Copy  
22 of Standard Operating Procedures Dated  
23 4/5/2019, was marked for purposes of  
24 identification.)

1 A. (Reviewing.)

2 Q. I'll have you take a look at this.

3 A. (Reviewing.)

4 THE WITNESS: You can just keep on going.

5 I am not real familiar with this. Wherever she wants me  
6 to go, we can just go there.

7 Q. I am just going to have you take a look at  
8 this one, generally. There is another one that we'll  
9 look at in more depth.

10 Do you recognize this document?

11 A. Yes, Standard Operating Procedures.

12 Q. And it is dated April 5, 2019, correct?

13 A. Yes.

14 Q. And does this standard operating  
15 procedures, as of April 5, 2019, apply to account  
16 managers and senior account managers?

17 A. This -- I'm not as close to the sales team  
18 as Leslie Peterson, but I would expect it does.

19 Q. Were you involved in the preparation of the  
20 standard operating procedure?

21 A. No. I might have been asked about some of  
22 the items, but I was not involved in creating it.

23 Q. Do you know who created it?

24 A. Greg Chmura was the original.

25 Q. Do you know when the first standard

1 operating procedures was created?

2 A. I do not know.

3 Q. Would it have been before April 5, 2019?

4 A. Yes.

5 Q. Would it have been before Mr. Lombardo  
6 started with the company?

7 A. No, we didn't have standard operating  
8 procedures before then. For sales.

9 Q. Do you know approximately when the first  
10 standard operating procedure would have been created?

11 A. I don't, but I would -- yeah, I don't.

12 Greg Chmura got a black belt and it was after that, I  
13 believe.

14 Q. Is this a true and accurate copy, to the  
15 best of your knowledge, of the April 5, 2019 standard  
16 operating procedures?

17 A. Yes.

18 Q. Let me show you what's been marked as  
19 Defendant's Exhibit T.

20 - - - - -  
21 (Thereupon, Deposition Exhibit T, Copy  
22 of Email with Standard Operating  
23 Procedures Dated 7/10/2019 Attached,  
24 was marked for purposes of  
25 identification.)

1

- - - - -

2

Q. There is a cover email, and then a document  
following. I will let you scroll down and take a look  
at that.

5

A. (Reviewing.)

6

Q. Do you recognize this document?

7

A. I'm not copied on this email, but I see  
what -- I've read what you put in front of me.

9

Q. If you go to the second page of this, you  
will see, Standard Operating Procedures dated  
July 10, 2019, correct?

12

A. Okay.

13

Q. Have you seen that standard operating  
procedures book?

15

THE WITNESS: I'm sorry, could you scroll  
over so I can see what this looks like?

17

MR. SATTERWHITE: Sure.

18

THE WITNESS: You can keep on going. I am  
interested in the text.

20

MR. SATTERWHITE: (Indicating).

21

THE WITNESS: Okay.

22

A. So the reason why I am kind of scratching  
my head here is, see, now this one I haven't read --  
unfortunately, when Eli started with us, we had very  
good standard operating procedures; like, Greg had put

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1       together very easy to read and understandable. And Eli  
2       was asked to bring them up to date and put in some new  
3       things. Instead of taking Greg's format, which was  
4       standard for standard operating procedures, he took the  
5       whole thing and turned it into a verbal paragraph,  
6       which was hard to follow.

7                   We are now in the process of going back to  
8       Greg's approach, which was clearer for the account  
9       managers. So that's -- I have not read this one, and  
10      it's -- go ahead.

11                  Q.     I was going to ask you, do you know if the  
12       July 10, 2019 version that's in front of us now was  
13       implemented?

14                  A.     I do not know.

15                  Q.     Would Mr. Auerbach know that?

16                  A.     He was the one who sent the letter, so I  
17       would expect so. The email.

18                  Q.     Other than the employee handbook and  
19       standard operating procedures, are there any other  
20       policy and procedures documents that control -- or that  
21       was provided to account managers or senior account  
22       managers?

23                  A.     Not that I'm aware of.

24                  Q.     And does the implemented version of the  
25       standard operating procedures apply to all account

1 managers and senior account managers?

2 A. I would expect they would.

3 Q. Going back to Exhibit A. You were  
4 designated as the corporate representative regarding  
5 Topic 19, "Training on employment policies and  
6 procedures and/or the employee handbook between  
7 February 1, 2015 and October 31, 2019, including any  
8 training provided to Mr. Lombardo", correct?

9 A. Correct.

10 Q. What type of training did Chmura conduct  
11 with respect to the standard operating procedures and  
12 employee handbook?

13 A. Well, they were all asked to read it, to  
14 sign it, sometimes to kind of remind what they had  
15 signed and agreed to. Training would -- when I think  
16 of training, I think of training on how to use JobsEQ  
17 on the analytics behind it, how they were created.

18 Q. Why don't we talk about that more  
19 generally. What type of training was provided to an  
20 account manager?

21 A. So when they first started working with us,  
22 especially in the beginning with Rick and Austen, Greg  
23 -- well, really, myself, John and Greg gave all the  
24 demos. So they would sit in on our demos and we would  
25 give them PowerPoint presentations. For example,

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1 Leslie gave them a PowerPoint presentation, how to do  
2 sales, how to close sales.

3 They would listen in on a lot of demos  
4 until we got to the point where we felt they could do  
5 it on their own, then they would give us the demo as if  
6 we were the customer. And once they were finally able  
7 to answer all the questions we thought were necessary,  
8 then they were let loose to do their own demos.

9 Q. What other training was provided to  
10 Mr. Lombardo?

11 A. We had -- again, like, Leslie Peterson's  
12 background is from, you know, Fortune 500, Eastman  
13 Chemical with Kodak, sales training, international  
14 sales, and so she would give them PowerPoint  
15 presentations and coach them through how to do sales  
16 and close them. And we've had Marvin in Cleveland, who  
17 is a sales coach, give them some sessions.

18 Q. Did Leslie -- or Ms. Peterson rather, did  
19 Ms. Peterson provide that training during a period of  
20 time, or did she provide -- let me ask a much more  
21 simple question.

22 Did Ms. Peterson provide training  
23 throughout Mr. Lombardo's employment?

24 A. She did while she was the manager, but even  
25 when she -- Kyle West took over doing sales, he

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1 referred to her. And I recall an incident where --  
2 again, this was a -- an issue where Rick did something  
3 where they had to reprimand him something for it. So  
4 she was always involved, but she was only providing  
5 sales training during the first part. And when we get  
6 new salespeople, for example, the newest people, she  
7 provided some training to them as well. And I did,  
8 too.

9                   The verticals are areas that we've worked  
10 in for 20 years. That's not a development work force.  
11 So they had no clue, well, what do these people do, or  
12 why they do they even need our product? So we did a  
13 lot of coaching and teaching for them to understand who  
14 the client is and why our tool is real helpful to the  
15 client.

16                 Q.     Can you explain to me the vertical concept?

17                 A.     Well, I guess we try to group our customers  
18 in -- into what we call verticals. So educators are a  
19 vertical. Like, educators, higher education, CTE,  
20 technical community colleges. So that's all --  
21 education counts as one vertical. Another vertical  
22 would be educators -- I'm sorry, economic developers.

23                   So Greater Richmond Partnership. We may  
24 have the chambers as another vertical, but it also  
25 falls under economic development. And then there is

1 workforce development.

2                   So there is something called, the Workforce  
3 Investment Opportunity Act, which has been around in  
4 different forms since the 1950's, where money comes  
5 from the federal government and given to the state.  
6 The state takes their 10% admin and then gives it to  
7 different areas around the state for these workforce  
8 groups to help displaced workers find new jobs.

9                   The Trade Act, when we lost all these jobs  
10 in Danville because of going overseas in textiles and  
11 apparel, that's another vertical on the workforce side.  
12 And then we have H.R., human resources, the  
13 corporate -- corporate real estate, and then there is  
14 probably all other work we have, you know -- we have  
15 some consulting firms, large consulting firms that use  
16 JobsEQ, and corporations.

17                  Q.     How did -- well, I will come back to that  
18 in your individual deposition because I know I'll draw  
19 an objection. I'm curious as to how JobsEQ works with  
20 so much data as applied, but I will come back to that.

21                  MR. SATTERWHITE: I'm sorry, Christine. We  
22 are not hearing you very clearly.

23                  MS. COOPER: Oh. I have my phone as close  
24 to my face as I can without holding it up to it, so I  
25 will do better to speak into it.

1 MR. SATTERWHITE: Sorry.

2 MS. COOPER: No, it's technology.

3 Q. Did -- and I think you testified to this  
4 earlier. Did Chmura keep a personnel file on  
5 Mr. Lombardo?

6 A. Yes.

7 Q. Do you know what is contained in his  
8 personnel file?

9 MR. SATTERWHITE: Object to the scope.

10 A. I have not looked at that file recently.

11 Q. Did Chmura keep any -- let me take a step  
12 back. I am going to turn your attention back to  
13 Defendant's Exhibit A and Paragraph 24. If you will  
14 take a look at that.

15 A. (Reviewing.)

16 Yes.

17 Q. You were designated as the corporate  
18 representative to testify to this topic; is that  
19 correct?

20 A. Correct.

21 Q. Did Chmura keep a record of the hours that  
22 Mr. Lombardo worked each day?

23 A. We had records such as when he used the key  
24 fob to get into the office, when he was working on his  
25 computer, and that type of information that gave us a

1 sense of his weekly hours.

2 Q. Did Chmura use any type of time clock  
3 software, like to punch in and punch out?

4 A. No.

5 Q. Was Mr. Lombardo required to log his time  
6 in any form or fashion?

7 A. I'm sorry, can you say that again? Was  
8 Mr. Lombardo --

9 Q. Required to log his time?

10 A. No.

11 Q. I am going to turn your attention to Topic  
12 Number 27, "Complaints made by Mr. Lombardo regarding  
13 overtime pay and unpaid commissions." You are  
14 designated as the corporate representative to speak on  
15 this topic, correct?

16 A. Correct.

17 Q. Are you aware of any complaints  
18 Mr. Lombardo made regarding overtime pay to Chmura?

19 A. Unequivocally, unequivocally, never.

20 Q. What about with respect to unpaid  
21 commissions?

22 A. Unpaid commissions? You know, Rick was a  
23 complainer. You know, for someone who made over  
24 \$150,000, it is amazing that he would complain over  
25 \$100. So I am sure he had complained, and I am aware

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1 of some of them. I believe Leslie Peterson is the one  
2 who can explain to you why he did not get what he  
3 thought he was due.

4 Q. Well, you were designated as the corporate  
5 representative on this topic. Did you prepare for this  
6 topic?

7 A. Well, let's see. What number are we at  
8 again?

9 Q. 27, unpaid commissions.

10 A. Well, I talk to Leslie about what she was  
11 finding and those where he felt he was not paid  
12 commissions, were those where he should not have been  
13 paid full commission. The guy who preceded him, Rob I  
14 believe his name was, had some sales that were just  
15 about done. I mean, all Rick had to do was get the  
16 signature. That did not warrant 15%.

17 So in any case where he had -- he claims he  
18 had unpaid commissions, it would be a situation like  
19 that where he wasn't warranted the full amount.

20 Q. Can you explain again why he wasn't  
21 warranted the full amount? Let's use the very same  
22 example, you mentioned Rob. Using that example, can  
23 you walk me through that a little slower?

24 A. Sure. Okay, so when -- you know, it takes  
25 a lot of work. We appreciate our salespeople. It

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1       takes a lot of work to get a sale. You have to call  
2       someone on the phone.

3                  You may have to call them 10 times, and  
4       they hang up on you the first 9 times. They finally  
5       get an answer and you say, Hey, can I give you a demo,  
6       and they say, sure. They put up a time, and then guess  
7       what, oh, I am not available now, let's make it next  
8       week.

9                  So you got all prepared. You have to go  
10      another week, call them on the phone. You give them  
11      the demo, they really like it, and then they say, we  
12      really like this, but we're not the decision maker.

13                 We need to give another demo to the  
14      decision maker. So then they get in, they get it to  
15      the decision maker, and they give another demo, and  
16      they say, this is great, how much is it going to cost?  
17      I'm really going to have push on the budget.

18                 And then the salesperson continues to call  
19      every couple of weeks to say, Hey, have you gotten this  
20      through the budget? They finally get it through the  
21      budget and then they say, now we need the contracts.  
22      We send them the contracts, and often times they will  
23      come back and they will make changes to it, or -- and  
24      we have to -- you know, our good attorneys here have  
25      taught us things we can accept and things we can't.

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1                         Sometimes we have to run it by the  
2 attorney, and you know that cost a little bit of money.  
3 So now at this point, we have an agreement that has  
4 already been signed -- not already been signed -- that  
5 the client is ready to sign, it gets handed to Rick and  
6 Rick calls this guy on the phone -- calls him on the  
7 phone, he picks up first time, and he says, I'm  
8 emailing this to you. He emails it to him and it gets  
9 signed.

10                  Q.     And so what commission -- that makes sense.  
11                         What commission would have been paid on instances like  
12 that?

13                  A.     On that one, I think it might have been 5%  
14 or 3%. I'm not sure off the top of my head.

15                  Q.     The scenario you just laid out, the calling  
16 10 times, the doing the demos, or setting up a new time  
17 for a demo, giving the demo, was that all -- is that  
18 all work done in house while the account manager was in  
19 their office?

20                         MR. SATTERWHITE: I'm sorry. I didn't hear  
21 the middle part of that question, Christine.

22                  Q.     Let me say it again. The scenario that you  
23 just took us through, Dr. Chmura, that scenario, were  
24 those calls made while -- would those calls be made  
25 while in the Chmura office?

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1           A.     In that particular scenario, they were.  
2     With Rob, we went up to the pentagon several times. He  
3     was former military, so we were trying to make some  
4     sales to the military. So, you know, it varies.

5           Q.     Did -- were there ever instances in which a  
6     similar scenario would play out, the account manager  
7     would receive the full commission?

8                 MR. SATTERWHITE: I'm going to object to  
9     the scope to the extent this overlaps with the  
10    calculations and commissions topic that we've  
11    designated Ms. Peterson for. She can answer, but in  
12    her individual capacity.

13                MS. COOPER: Okay.

14                A.     Can you ask the question again?

15                Q.     Yes, I can. The scenario that you just set  
16    out for us, were there ever instances in which account  
17    managers would have received the full commission as  
18    opposed to reduced commission?

19                A.     There shouldn't have been.

20                Q.     To your knowledge, or do you know if there  
21    ever were?

22                A.     To my knowledge, yeah, based on my personal  
23    experience, I don't know of any.

24                Q.     Do you know how many complaints  
25    Mr. Lombardo made regarding unpaid commission?

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1           A.     How many complaints? I do not know. I  
2 didn't keep track of that.

3           Q.     Do you know whether Chmura owes  
4 Mr. Lombardo any unpaid commissions?

5           MR. SATTERWHITE: Object to the form.

6           A.     I would -- I don't expect that we owe him  
7 anything regarding unpaid commissions.

8           Q.     Do you have any factual basis for that  
9 belief or expectation?

10          A.     We are very --

11          MR. SATTERWHITE: Object to the form.

12          A.     We are very careful about what we do, and  
13 once again, integrity is important to us. So even when  
14 there is someone that we had to dismiss, we look  
15 carefully to make sure that we are dealing honestly.

16          Q.     I am going to turn your attention to Topic  
17 Number 28, "Mr. Lombardo's termination, including the  
18 decision to terminate, reason for termination, meetings  
19 regarding termination, and notice to Mr. Lombardo of  
20 his termination." You were designated the corporate  
21 representative on that topic, correct?

22          A.     Correct.

23          Q.     When was the decision to terminate  
24 Mr. Lombardo made?

25          A.     Well, backing up. I was at the Governors

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1 Advisory Board of Economists, which once a year I am  
2 supposed to go to these meetings to help Virginia look  
3 at its forecast. And around 10 o'clock, I got an email  
4 from Leslie Peterson asking if I could step out to talk  
5 to her.

6 And then it ended up, given what was going  
7 on; that is, Rick running around telling people he was  
8 going to sue the company, he was going to put us under,  
9 he was going to sell our lists to the highest bidder,  
10 he was saying all kinds of things about leadership that  
11 was untrue about them personally, I had to dismiss  
12 myself from that meeting.

13 As I was walking back to the office,  
14 Leslie, Greg and Sharon already had Rod on the line to  
15 discuss our next steps --

16 MR. SATTERWHITE: And I don't want --

17 MS. COOPER: I don't want to hear about  
18 your --

19 MR. SATTERWHITE: -- any part of that  
20 conversation.

21 THE WITNESS: Okay. Thanks for stopping  
22 me.

23 MS. COOPER: I was going to say the same  
24 thing, Rod.

25 BY MS. COOPER:

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1 Q. When was that? You were at a meeting.

2 When was that meeting?

3 A. I should have written down that date. It  
4 was in the middle of October.

5 Q. Did you actually hear Mr. Lombardo say any  
6 of the statements that you just testified he stated?

7 A. No, I was in Richmond, Virginia and he was  
8 in Cleveland, Ohio.

9 Q. What statements did Mr. Lombardo -- or do  
10 you believe Mr. Lombardo made? Let me restate that.

11 Did Ms. Peterson tell you that Mr. Lombardo  
12 was making untrue statements about leadership?

13 A. I think she did. I got this information as  
14 well from Greg and Eli, I believe.

15 Q. And was it at the same time he was making  
16 the other statements you mentioned?

17 A. Yes.

18 Q. What were those -- what were the statements  
19 that were untrue?

20 THE WITNESS: Do I need to tell her?

21 MR. SATTERWHITE: Yes.

22 A. That Leslie hated men. That his wife --  
23 her husband slept with the neighbor's wife; that both  
24 Leslie and I hated men; that we didn't want to pay them  
25 commissions.

1 Q. Okay. So what occurred after you talked to  
2 -- after you had your conversation with counsel, what  
3 occurred next?

4           A.       I believe the letter went out to Rick  
5 requesting that he send back the information. I  
6 believe we offered him maybe 10,000 as a severance.

7 Q. At that point, was Mr. Lombardo on unpaid  
8 leave?

9           A.       He was not -- I don't remember if it was  
10      unpaid or not, but he certainly wasn't working. But he  
11      was still -- he had not been fired yet.

12 Q. Why did Chmura decide to terminate  
13 Mr. Lombardo's employment?

14           A.     Well, certainly, we saw from the pattern of  
15       his work relationship with us, that, one, greater  
16       distrust was occurring over time. But when you get to  
17       the point that someone says, "I am going to take your  
18       book of business and sell it to the competition, I am  
19       going to put you out of business, I am going to screw  
20       you," I think any reasonable minded person would fire  
21       someone at that point.

22 Q. In the days leading up to those reported  
23 statements, what had occurred?

24 A. Can you be more --

25 MR. SATTERWHITE: Object to the form.

1           A.     Can you be more specific than that?

2           Q.     Well, did Mr. Lombardo just wake up one  
3 morning, talking to himself in his head, or did  
4 something occur prior to --

5                 MR. SATTERWHITE: Same objection.

6           A.     I don't have a timeline of what set him  
7 off.

8           Q.     I believe in the Complaint that we have  
9 gone through, it was stated that Mr. Lombardo was upset  
10 that the commission structure was going to change; is  
11 that correct?

12                 MR. SATTERWHITE: Object to the form.

13           A.     That's speculation. It could be that's why  
14 he was upset. But then again what I said earlier was  
15 that -- that change in commission structure had not  
16 been put in place. It had not been approved by  
17 leadership.

18           Q.     When was it approved -- let me ask. Was it  
19 approved by leadership?

20           A.     It was not approved by leadership prior to  
21 Rick's dismissal.

22           Q.     Was it approved after Mr. Lombardo's  
23 dismissal?

24           A.     A change was made. Obviously, a change had  
25 to be made, but I am not sure that it was -- in fact, I

1 am sure it wasn't exactly what was proposed by  
2 Mr. Auerbach -- Mr. Auerbach, Eli.

3 Q. Did Chmura have any meetings regarding --  
4 without counsel -- meetings regarding Mr. Lombardo's  
5 termination?

6 A. I'm sure we did. I mean, it was a very  
7 disruptive thing to happen to someone, to have one of  
8 your employees come in and tell you, basically, that  
9 they are going to destroy what you had created in the  
10 prior 19 years; that they are going to destroy the 45  
11 people that you are employing. Oh, yes, we had many  
12 conversations, I am sure.

13 Q. But, again, you didn't personally hear him  
14 make any statements, correct?

15 A. No, I did not.

16 Q. Do you know how much time passed between  
17 when Mr. Lombardo was put on unpaid leave and when he  
18 was terminated?

19 A. I guess in the letter, we gave him a little  
20 time to decide if he was going to take the \$10,000 and  
21 sign that document. So when he refused to sign it,  
22 that probably was the point where we dismissed him.

23 Q. Why didn't Chmura just fire him that day  
24 that he purportedly made those comments?

25 A. Well, we wanted to look -- we wanted to

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1 make sure that we considered our options. We wanted to  
2 give him the opportunity to say that he was going to  
3 abide by the confidentiality agreement he had signed.  
4 We needed that confidence first. We were giving him,  
5 like we always are and have been, giving him the  
6 opportunity to do the right thing.

7 Q. So his options -- were there additional  
8 options other than signing the severance agreement that  
9 you provided -- that Chmura provided or being  
10 terminated?

11 A. Not after what he said. No, there were no  
12 other options.

13 Q. Were you present when Mr. Lombardo was sent  
14 home from the office in October?

15 A. No. As I previously stated, I was in  
16 Richmond, Virginia and he was in Cleveland, Ohio.

17 Q. Did you have any communications with  
18 Mr. Lombardo on that day?

19 A. I don't recall. I would say, no, I did  
20 not.

21 Q. Did you have any communications with  
22 Mr. Lombardo after that time?

23 A. No.

24 Q. Did Chmura inform -- let me restate that.  
25 Did Mr. Auerbach know that Mr. Lombardo

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1       would either be terminated or have to sign -- I'm sorry  
2       let me restate that.

3                     Did Mr. Auerbach know that Mr. Lombardo  
4       would either be terminated or sign the agreement that  
5       was handed to him that day or sent to him?

6                     MR. SATTERWHITE: Object to the form.

7                     A.      Yes.

8                     Q.      At the time of Mr. Lombardo's termination,  
9       he was one of the top producing account managers,  
10      correct?

11                  A.      Correct.

12                  Q.      And at the time he was terminated, he had  
13       been informed by Mr. Auerbach that the commission  
14       structure at Chmura was going to change; is that  
15       correct?

16                  A.      Apparently. I don't know that Auerbach  
17       told him for sure it would be happen, but that it was  
18       being presented to leadership. And it did make the  
19       change. We have to be able to -- we have to be able to  
20       service our client.

21                  Q.      Up to that point, up to this incident -- I  
22       want to understand. The reason the changes were made  
23       were to better provide for the client. How were the  
24       clients not being provided for prior to making the  
25       changes within the sales structure, the commission

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1 structure?

2           A. To better provide for the clients and to  
3 enable us to use the -- their account managers' skills.  
4 Both Austen and Rick were very good at prospecting and  
5 bringing in new clients. If you are spending all of  
6 your time calling on the client that you already have,  
7 then you are not out there prospecting. So the new  
8 business brought in would be less.

9           In terms of the clients, if you have, you  
10 know, 300 clients, it is pretty hard to call all of  
11 them and get their input on whether JobsEQ is going  
12 well for them, whether they need to see things added to  
13 JobsEQ and that type of thing.

14           Q. With respect to that, was Mr. Lombardo  
15 hitting the quotas at that time?

16           A. Yes, he was.

17           Q. And Mr. Lombardo was incentivized to obtain  
18 the sales because the commission was 15%, correct?

19           A. Correct.

20           Q. And a renewal sales commission was 3%,  
21 correct?

22           A. Correct.

23           Q. In going back to how the clients were  
24 better served, how were the clients not being served  
25 prior to the change in the commission structure?

1 A. That's a --

2 MR. SATTERWHITE: Object to the form.

3 A. -- particular question that I can't answer.

4 Q. Well, a decision was made by Chmura, and  
5 you testified that the reason the decision was made to  
6 change the structure was to better service the client.  
7 What -- how were clients not being serviced better  
8 before? What -- let me re-ask it.

9 What deficiencies were there on the service  
10 of the client that was solved by making the change?

11 A. They weren't getting their touch points.

12 They weren't getting phone calls from the account  
13 manager. They weren't having a half hour conversation  
14 to find out, "Are you having any issues with JobsEQ?  
15 Are there things we need to do for you?"

16 Q. Was Chmura getting complaints from the  
17 clients about this?

18 A. I don't recall.

19 Q. All of this information is tracked within  
20 Salesforce, correct? The touch points are tracked  
21 within Salesforce, correct?

22 A. Correct.

23 Q. Did you review the Salesforce data to see  
24 if the touch points had changed -- the number of touch  
25 points had changed?

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1           A.     I don't even have a password to Salesforce.

2           Q.     Did anyone at Chmura track Salesforce to  
3 determine if the number of touch points per client has  
4 changed?

5           A.     Now, I see this line of discussion as being  
6 kind of odd because we are talking about a company --  
7 we are talking about a company that serves the client  
8 because they have JobsEQ. We have a competitor. We  
9 believe our data are better than the competitors.

10                 If we are going to reach out and give  
11 people this better data, we can't do it with two super  
12 stars. We've got to have more than that. The company  
13 is going to evolve over time. It is just -- it is how,  
14 you know, companies grow.

15                 So I -- you know, certainly, we are serving  
16 the clients better when we have them distributed.  
17 There are a lot of different models that can be used.  
18 You've got the hunter, you've got the farmer, the --  
19 you know, it is all business strategy. Nothing against  
20 Rick, nothing against the clients -- you know, the  
21 account managers that we had, it is just a matter of  
22 business evolving.

23                 Q.     At the time that Mr. Lombardo was put on  
24 unpaid leave, or immediately prior to that, did he have  
25 the highest renewal rate?

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1           A.     From -- I believe he did, but not by much,  
2 maybe 3 percentage points.

3           Q.     Who would have been behind him?

4           A.     Austen Steele.

5           Q.     Was there anyone else as far, any other  
6 account managers close?

7           A.     I don't know Wilson's numbers.

8           Q.     I want to go over another exhibit, but it  
9 is marked highly confidential, so I need to excuse Rick  
10 from the room before I bring that up.

11                - - - - -

12               (Short break off the record.)

13               (Mr. Lombardo left the room).

14               - - - - -

15 BY MS. COOPER:

16           Q.     Moving on to Topic Number 30, "The changes  
17 to the operations of the sales team in October  
18 2019, including the reason for the changes."

19               Dr. Chmura, you were designated as the  
20 corporate representative of this topic, correct?

21           A.     Correct.

22           Q.     I want to show you what's been marked  
23 Defendant's Exhibit X.

24               - - - - -

25               (Thereupon, Deposition Exhibit X,

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1                   Highly Confidential Copy of Email Dated  
2                   10/2/2019 Bates CHMURA0201264-269, was  
3                   marked for purposes of identification.)  
4                   - - - - -

5                   Q.     You might have to manipulate this to --

6                   A.     Yes, I am familiar with this.

7                   Q.     What is it?

8                   A.     This is -- I believe this is that proposed  
9 organization structure change that Eli was presenting  
10 to us.

11                  Q.     And was any of this proposal adopted?

12                  A.     Not before Rick was dismissed, and some of  
13 it was adopted afterwards.

14                  Q.     Would this have been a proposal that Eli  
15 talked to Mr. Lombardo about?

16                  MR. SATTERWHITE: Object to the form.

17                  A.     I have no clue.

18                  Q.     If you page down just a couple pages to one  
19 which is Bates labeled Chmura 0201266, the chart with  
20 Sales Manager at the top.

21                  MR. SATTERWHITE: (Indicating).

22                  Q.     That page there.

23                  MR. SATTERWHITE: Sorry. Very sensitive.

24                  Okay (indicating), there.

25                  Q.     And this page shows a diagram of the

1 proposed structure for the sales team, correct?

2 A. Correct.

3 Q. Ignoring the commission and salaries on  
4 there, the structure itself, this structure has  
5 actually been on that list quite a while?

6 A. No.

7 Q. What is the current structure of the sales  
8 team if you know?

9 MR. SATTERWHITE: I am going to object to  
10 the scope, subject to the objection that we made in the  
11 30(b)6 designation, but she can answer.

12 A. We certainly had a sales manager, and we  
13 have account executives, or account managers. The  
14 account managers and account executives all report to  
15 the sales manager. There is no territory manager, so  
16 it is very flat.

17 Q. What is an account executive?

18 A. Someone who has more experience and more  
19 responsibilities than the account manager.

20 Q. Was it a renaming of the senior account  
21 manager position?

22 A. It could be. I don't even know if we use  
23 an account executive or if we just use senior account  
24 manager, to be honest.

25 Q. If you flip to the next page here. I guess

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1 I am going to ask you so scroll --

2 MR. SATTERWHITE: (Indicating).

3 Q. This shows, or purports to be the 2020  
4 sales presentation plan under the existing structure.

5 Do you see that?

6 A. Yes.

7 Q. And in this existing structure -- is this  
8 -- well let me ask you this, do you know who prepared  
9 this?

10 A. I read the email documents. I am not sure,  
11 actually, if Eli did or Greg, but I -- I think it  
12 probably was Eli, but Greg reviewed it.

13 Q. But you did not create it, correct?

14 A. Oh, no.

15 Q. If you would turn to the next page of this  
16 document -- wait, before you do, go to the last one.  
17 I'm sorry. It has, a total compensation of \$215,000  
18 for Mr. Lombardo on that first line. Do you see that?

19 A. Yes.

20 Q. What's your understanding of what the  
21 number represents?

22 A. It would -- it would be an estimate for  
23 2020, what Eli thought Rick would bring in.

24 Q. Okay. You can scroll to the next chart.

25 MR. SATTERWHITE: (Indicating).

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1           Q.     The top of it says, 2020 Sales Compensation  
2 Plan - Proposed Structure, correct?

3           A.     Correct.

4           Q.     And on that same line with Mr. Lombardo's  
5 name, Rick, on there, it has nothing in the base  
6 salary, correct?

7           A.     Correct.

8           Q.     Nothing in New Business?

9           A.     Correct.

10          Q.     Nothing in Commission Rate?

11          A.     Correct.

12          Q.     Nothing in New Business Commission?

13          A.     Correct.

14          Q.     Or Renewal Business?

15          A.     Correct.

16          Q.     Or in Commission Rate?

17          A.     Correct.

18          Q.     Or in Renewal Commission?

19          A.     Correct.

20          Q.     But it has a total compensation of \$80,000,  
21 correct?

22          A.     Correct.

23          Q.     Do you know what that \$80,000 represented?

24          A.     My recollection is that Eli was trying to  
25 come up with an alternative scenario if the plan -- if

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1       the plan was rolled out, if the change in sales  
2       structure was laid out as he proposed, he felt Rick  
3       would be unhappy. And Eli was proposing -- Eli  
4       believed that Rick would not leave without drama and  
5       was proposing that we give him \$80,000 to leave without  
6       drama.

7           Q.     And what did leadership decide to do?

8           A.     Well, we didn't roll out the plan, for one  
9       thing. But we certainly were reticent to pay him  
10      \$80,000 to do what we had already paid him to do, to --  
11      we didn't want to pay someone -- we thought it was  
12      unethical and not honest to pay someone to do what they  
13      should have done under the confidentiality agreement  
14      that they signed with us.

15           Q.     So this email was dated -- well, let me --  
16      this email was dated on -- the email attaching this  
17      information behind it was dated October 2, 2019,  
18      correct?

19           A.     Correct.

20           Q.     At that point, had it been decided that  
21      Mr. Lombardo would be terminated from employment?

22           A.     No. We did not decide to terminate him  
23      until he started running around the office saying he  
24      was going to sue us and put us under.

25           Q.     Then why would Mr. Auerbach -- let me

1 strike that.

2 At this point on October 2, 2019, did  
3 Chmura intend to keep Mr. Lombardo as an employee?

4 A. Yes.

5 Q. So why -- did Mr. Auerbach prepare this  
6 proposed structure at someone's direction?

7 A. I don't believe so, no. I think he did  
8 this on his own.

9 Q. If you would turn to -- page down and you  
10 will see a sheet not too far down there that has a pie  
11 chart and a graph on it.

12 MR. SATTERWHITE: Can you give me a Bates  
13 number?

14 MS. COOPER: Oh, yes, I can. No, I can't  
15 because it is a native document. It is the very next  
16 one after the pay schedule. You will see it attached  
17 to the right.

18 MR. SATTERWHITE: (Indicating).

19 MS. COOPER: There you go.

20 Q. And can you describe for me what this page  
21 on Exhibit X is showing?

22 A. If I could see it. I am going to have to  
23 walk up. You are --

24 MR. SATTERWHITE: Kelli, can you still hear  
25 her?

1                   COURT REPORTER: So far, yes.

2                   A. It is showing sales by account manager over  
3 time.

4                   Q. From 2015 through 2019, correct?

5                   A. Quarter Three, correct.

6                   Q. And there is a pie chart there that shows  
7 JobSEQ New Sales 2015 to 2019, Q3, correct?

8                   A. Correct.

9                   Q. Mr. Lombardo makes up 47% of those new  
10 sales, correct?

11                  A. That's what it is showing.

12                  Q. Do you have any reason to believe that  
13 number is not accurate?

14                  A. Well, those are his current clients. That  
15 probably -- that could have taken into account the  
16 clients that were handed to him when he first came to  
17 work with us. So there should be, instead of -- there  
18 should be another category that are called, either,  
19 book of business given from prior sales.

20                  And that would be not just Chris and Leslie  
21 sales, but whenever an account manager left, we would  
22 divvy up their sales. So John Grebenc, for example,  
23 when he left, we divvied up his sales to give them to  
24 the other account managers. So that would reduce  
25 everyone's piece of the pie a little bit.

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1 Q. But that still doesn't add up to 100%,  
2 right?

3           A.       Oh, yes, but I'm just saying it is going it  
4       reduce everyone's piece of the pie because you are  
5       going to have a pie there from maybe 10% JobsEQ clients  
6       won by different sales persons, but then handed off to  
7       Rick or handed off to Austen.

8 Q. And then they would have to maintain that  
9 relationship, correct?

10 A. Correct. Going forward, correct.

11 Q. What are -- what changes were made -- let  
12 me -- so this proposal was not adopted in its entirety,  
13 correct?

14 A. Correct.

15 Q. I am going to put this document away and go  
16 get Mr. Lombardo and then continue, if that's all  
17 right?

18 A. Okay.

19 MR. SATTERWHITE: Fine by me.

21 (Short pause off the record.)

22 (Mr. Lombardo rejoined the deposition.)

24 MS. COOPER: Back on.

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1 BY MS. COOPER:

2 Q. Ultimately, what changes were adopted to  
3 the structure of the sales team?

4 A. At what point in time?

5 Q. After --

6 MR. SATTERWHITE: Sorry, can I stop you?  
7 If Mr. Lombardo's coming back in the room, can we get  
8 rid of this document from the screen?

9 MS. COOPER: Oh, my goodness, yes. I am  
10 sorry. Thank you. I put the hard copy away, but ...

11 BY MS. COOPER:

12 Q. After Mr. Lombardo's termination, what  
13 changes were made to the structure of the sales team?

14 A. Well, we added a couple of people. We  
15 changed the rates to increase their salary.

16 Q. How much did you increase -- what was the  
17 prior base salary?

18 A. I believe it was 55, but I'm not the person  
19 in charge of their salaries.

20 Q. Who is?

21 A. Leslie Peterson would have a better idea of  
22 what it is.

23 Q. And after the change, what was the new base  
24 salary?

25 A. I believe it was 60,000 but I'm not sure.

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1 Q. Would the commission --

2 A. It would vary by -- I'm sorry.

3 It varied by person as well, account  
4 manager or -- either account manager or account  
5 executive, whatever the titles we are using.

6 Q. Was the senior account manager paid a  
7 higher base salary than an account manager?

8 A. Yes.

9 Q. Do you know how much more that a senior  
10 account manager --

11 A. I'm sorry, I don't. I'm sorry, I don't.

12 Q. Did the commission percentage change?

13 A. Yes, it went down -- again, I am not sure  
14 how much. I believe the renewal went from 5 to 3. And  
15 the new ones, I think, went from 15 to 13, but I'm not  
16 sure.

17 Q. And would Ms. Peterson also know that?

18 A. Yes.

19 Q. Were there any other changes?

20 A. Not that I recall.

21 Q. Switching gears. I don't know if you would  
22 like to take a break. I am about to move on to a  
23 completely different topic, or if you just want to keep  
24 charging ahead?

25 A. It's up to all of you. I'm fine.

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1 MR. SATTERWHITE: We are good to go.

2 MS. COOPER: Okay. Good.

3 Q. If you would look at Exhibit A, Topic  
4 Number 33. You were designated to testify about "The  
5 confidential and trade secret information purportedly  
6 retained by Mr. Lombardo, including a description and  
7 itemization of each purported trade sheet, and all  
8 purportedly confidential information," correct?

9 A. Correct.

10 Q. And I think we covered a lot of this, but I  
11 believe earlier you testified that there were the notes  
12 from the two conferences, correct?

13 A. Correct.

14 Q. And then, perhaps, an Excel spreadsheet  
15 with client information on it, correct?

16 A. Correct.

17 Q. Is there anything else that you allege  
18 Mr. Lombardo retained that was confidential or trade  
19 secret information -- or contained confidential or  
20 trade secret information?

21 MR. SATTERWHITE: I object to the form.

22 A. Certainly the pipeline of -- or the road  
23 map of what's being added to JobsEQ is confidential.  
24 Our licenses are confidential. The pricing sheet is  
25 confidential. That's all that comes to mind off the

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1 top of my head.

2 Q. Can you explain what the pipeline/road map  
3 is?

4 A. Sure. So our clients ask us to add things  
5 to JobsEQ. They say, Wouldn't it be nice if we could,  
6 instead of being able to look at a footprint by the zip  
7 code level, wouldn't it be nice if we could do it by  
8 the block level, down to the city block level.

9 So that would be an example that's in our  
10 road map. Or, Can you add a report related to Section  
11 5, that they can automatically pull out. Can you add  
12 more detail on growth development products. Can you  
13 add housing permits?

14 So all of those items are things that are  
15 on our pipeline road. We are trying to get ahead of  
16 our competition. So if EMSI were to know -- so if EMSI  
17 were to know what was on our pipeline, they could put  
18 some of their workers -- I.T. workers on creating the  
19 same thing, maybe even faster than we did.

20 Q. Where was that information stored?

21 A. That information is in an Excel file. It  
22 is also in our -- when we give our monthly sales  
23 meetings, we discuss what's coming up on the pipeline.

24 Q. Do you have any reason to believe that  
25 Mr. Lombardo had access to that information after he

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1 was put on unpaid leave?

2 A. Just as far as his behavior, we don't know  
3 what he kept and what he hasn't disclosed; what he  
4 still has in his computer and what he has in his house.  
5 I have no idea of knowing.

6 Q. So you are speculating as to what may be  
7 out there?

8 A. You can say it that way.

9 Q. Essentially, you are giving me a list of  
10 the confidential information that Chmura has; is that  
11 correct?

12 A. I am giving you a partial list, yes.

13 Q. But not necessarily a list of what you know  
14 Mr. Lombardo retained?

15 A. That's correct. We don't know what he  
16 retained.

17 Q. You have since received a computer back  
18 that you allege Mr. Lombardo retained, correct?

19 A. That's correct.

20 Q. And you had a chance -- Chmura had an  
21 opportunity to look at that computer, correct?

22 A. No, we have not. The attorneys have.

23 Q. Is the computer still in the possession of  
24 the attorneys?

25 A. I believe it is.

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1           Q.     What process -- turning now to Topic Number  
2     36. You were designated as the corporate  
3     representative to testify regarding, "Chmura's process  
4     and procedures for the protection of highly  
5     confidential information and trade secrets, including  
6     the confidential and trade secret information  
7     purportedly retained by Mr. Lombardo," correct?

8           A.     Correct.

9           Q.     What processes did Chmura have in place to  
10   protect it's confidential information?

11          A.     Well, clearly, they sign a confidentiality  
12   agreement. So that's one item. We have passwords so  
13   that they can't get that information. So not  
14   everything is accessible through the account managers.  
15   But the --

16          Q.     What gets a password?

17          A.     Well, with Salesforce, there is a password.  
18   There are some documents that John Chmura, for example,  
19   gives us access to and then we have our own passwords  
20   that we use to access it.

21          Q.     I think what you are describing, and  
22   correct me if I'm wrong, but there are -- Salesforce  
23   has different -- or different people have different  
24   access levels to the information that is in Salesforce;  
25   is that correct?

1           A.     Correct.

2           Q.     Are you asserting that Mr. Lombardo  
3 accessed information, but not -- he did not have  
4 permission to access within Salesforce during his  
5 employment?

6           MR. SATTERWHITE: Christine, you are  
7 cutting out again. I lost --

8           MS. COOPER: Sorry.

9           Q.     Are you asserting that Mr. Lombardo  
10 accessed information that he did not have permission to  
11 access within Salesforce during his employment?

12          A.     No, the question is that he is using  
13 them -- he is using them incorrectly by giving it to  
14 other people.

15          Q.     And when you say, "them", what are you  
16 referring to? "Using them?"

17          A.     He -- the confidential information, whether  
18 it be the list of our customers, whether it be how much  
19 money each of our sales managers make, how many sales  
20 that they make, what our sales had been over time --

21          Q.     But he did not -- let me restate that.

22               At the time he was employed, he had access  
23 to that information, correct?

24          A.     Correct.

25          Q.     Does Chmura use a multi-factor

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1 authentication within Salesforce?

2 A. I don't have access to Salesforce, so I am  
3 not sure what -- we do use multi-factor in some cases.  
4 That would be a John question.

5 Q. Okay. What other process does Chmura have  
6 in place to protect it's highly confidential  
7 information and trade secrets?

8 A. Well, if it's a paper copy, it is locked up  
9 some place. If it's either information on how to  
10 create our JobsEQ product, then access is limited to  
11 only need-to-know basis.

12 Q. With respect to -- well, with respect to  
13 Number 37, you were designated as the corporate  
14 representative to testify, "A description of all  
15 resources, including time and money, invested in the  
16 development of the purport trade secrets retained by  
17 Mr. Lombardo, as alleged in the Complaint," correct?

18 A. Correct.

19 Q. Can you tell me what time and money  
20 resources were invested in generating the two -- the  
21 notes from the two conferences that you testified about  
22 earlier?

23 A. So you are limiting it to something very  
24 discreet now.

25 Q. I am starting -- yes, we will go through

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1 it.

2 A. Okay. All right. So that -- IEDC is a  
3 very big event for us. We are a corporate sponsor at  
4 \$25,000 per year. They have four meetings, and the  
5 other three are very small, like 2 to 300 people, if  
6 that. The one that -- the last one Rick attended had a  
7 couple thousand people that attend.

8 We pay for the salespeople to go to that  
9 meeting, so their travel costs, their hotel bills, the  
10 food that they eat there. And we have a booth that we  
11 have paid good money, and they cost maybe 5 - \$600 to  
12 ship those things around. And then, certainly, my time  
13 in preparing that Ed Talk should be thrown in there.  
14 So I'm sitting -- I sit in the booth for three days.

15 Q. What about the other conference? So you  
16 talked about the IEDC. The conference down in Texas.

17 A. The conference down in Texas, we sent only  
18 Mr. Lombardo. I am not sure what the sponsorship fee,  
19 if there was one for that. And, of course, the  
20 opportunity cost that we are paying for Mr. Lombardo to  
21 sit there and talk to our competitors, look for other  
22 job opportunities on our time behind us.

23 Q. Did everyone that attended the IEDC  
24 conference have the same access to the attendees?

25 A. Yes and no. Mr. Lombardo was supposed to

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1       be, you know, the guy with all the experience, training  
2       the other ones. So he pretty much snatched up all the  
3       cards and took notes.

4           Q.     What about the other attendees, and not  
5       Chmura's attendees? The other attendees at the  
6       conference?

7           A.     I'm sorry, I don't understand the question.

8           Q.     Was there -- was an attendee list provided  
9       for this conference?

10          A.     Yes, there was.

11          Q.     And did anyone in attendance have access to  
12       that attendee list?

13          A.     No. Only those who were -- I believe only  
14       those who were corporate sponsors or, you know, bigger  
15       sponsors.

16          Q.     And I apologize. I am going to repeat my  
17       question only because I just want to make sure I am  
18       clear on the answer.

19           Well, actually, I will go here. EMSI was  
20       present at the IEDC conference, correct?

21          A.     The IEDC conference, correct.

22          Q.     Was it a sponsor as well?

23          A.     It was. I believe -- I think they were a  
24       corporate sponsor.

25          Q.     So would they have had the same access to

1       the attendees that Chmura had?

2           A.     If they were a corporate sponsor, then they  
3       would have been given an attendee list.

4           Q.     Was the attendee list made available once  
5       you were at the conference? Did other attendees -- for  
6       example, if I just showed up at that conference, would  
7       I get an attendee list?

8           A.     No.

9                   MR. SATTERWHITE: Object to the form of the  
10      question.

11           A.     No, you would not get it.

12           Q.     Was the attendee list emailed prior to the  
13      conference?

14           A.     Typically, yes.

15           Q.     So the information contained on those  
16      notes, were, one, customer names, correct? Potential  
17      customer names, rather, correct?

18           A.     Potential customer names? Yes.

19           Q.     And those potential customer names could  
20      have been known by other attendees at the time,  
21      correct?

22           A.     They could have, but they -- we only knew  
23      of their interest because they stopped by our booth.

24           Q.     And how many companies had booths at the  
25      conference?

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1           A.       Oh, I don't know, 20/30, maybe a little  
2 more.

3           Q.       How many competitors of Chmura were  
4 present? And you may have already answered this. But  
5 how many competitors of Chmura were at the conference?

6           A.       Oh, EMSI is the only closely related that  
7 would have a full suite like we do.

8           Q.       What was the economic value of those notes,  
9 if different than, like, the damages calculation you  
10 gave earlier?

11          A.       I would say it was, at minimum, the damages  
12 I gave you earlier.

13          Q.       You said, "at minimum." What else would be  
14 added to that, or could be added to that?

15          A.       Well, as I said, we did the present value  
16 for four years. We could have done the present value  
17 for six years or seven years. More people who came by  
18 the booth that did not request a demo might have agreed  
19 to a demo after another phone call was provided.

20          Q.       Who are the competitors of Chmura?

21          A.       If we are just talking the JobsEQ, then the  
22 main competitor is EMSI, Burning Glass to some degree.  
23 At this point those are the main ones, maybe Headlight,  
24 but, you know, not so much. Maybe StateBook would be  
25 considered a competitor, but they are kind of

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1 different.

2 Q. Chmura has a client list, correct?

3 A. Yes.

4 Q. Does it also haves a prospective client  
5 list?

6 A. Well, I guess you could call it prospective  
7 client list. I mean, anyone who has been contacted  
8 would be considered a prospective client.

9 Q. And is it your belief that MC, or EMSI does  
10 not have the same client list that Chmura has?

11 A. I am sure they have a different client  
12 list. I mean, they don't -- unless someone handed them  
13 our client list. We probably go -- I'm sure we go  
14 after some clients that they go after, but I would not  
15 assume that they -- that we both have the same client  
16 list, no.

17 Q. And what facts support that contention?

18 A. Well, when people come up to you at a booth  
19 and they never knew that the data that we provide were  
20 even available. There are a lot of people out there  
21 that don't know what we can offer them. So if we are  
22 finding new clients every week because they don't have  
23 a tool similar to what we have, and that says to me  
24 that they are not on EMSI's client list.

25 Q. Can you describe for me who Chmura targets

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1 as a prospective client that EMSI does not target?

2 MR. SATTERWHITE: Object to the form.

3 A. It is kind of hard to say. I believe we  
4 appear to be going after a lot more of the CTE,  
5 continuing technical education, because we are picking  
6 those up right and left. And it seems like EMSI just  
7 doesn't know about the market, or they are not  
8 interested in servicing that market.

9 Q. Going back to the competitor list, can you  
10 describe for me how EMSI competes with Chmura?

11 A. Can you be more specific about that?

12 Q. Sure. Is it selling a similar product? Is  
13 EMSI selling a similar product?

14 A. Right. So they -- I am having a hard time  
15 trying to figure out how to answer that. They will  
16 come show a demo. They will undercut our price  
17 sometimes. They will emphasize, maybe, a feature that  
18 they think they have better than ours.

19 They will identify, perhaps, some analytics  
20 that we don't have. The same thing that we would do,  
21 ideally, to them, or in competing with them.

22 Q. And what does -- I think you said it was  
23 Burning Glass; is that correct?

24 A. Correct.

25 Q. What do they sell?

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1           A.     Well, they do a lot of things in the H.R.  
2     area, but where they compete with us is job postings.  
3     So they do duplicate. They crawl all these websites.  
4     They do duplicate it, and then they provide it as a  
5     tool. And we do the same, but we do a lot more than  
6     that. So they just have one little piece where we  
7     compete.

8           Q.     And what about Headlight?

9           A.     Headlight is a firm out of Texas that they  
10    put something together similar to us. It is  
11    occupational data, but it is not robust. It is not --  
12    there are a lot of holes in it. We do a lot of work to  
13    make sure that our data, whether -- information is not  
14    disclosed that use other sources to create an estimate.

15          Q.     And StateBook?

16          A.     StateBook. Again, it seems like more of a  
17    data dump from, you know, I want a bunch of different  
18    demographics, or occupations at a high level from a  
19    particular region.

20          Q.     What measures have Chmura taken to ensure  
21    that it's confidential information remains unknown to  
22    EMSI, Burning Glass, Headlight and StateBook?

23                    MR. SATTERWHITE: Object to the form.

24          A.     We have our employees sign a  
25    confidentiality agreement. We don't put it anywhere on

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1       the internet. We protect stuff, confidential  
2       information as a need-to-know basis. If we are letting  
3       a large company, for example, a consulting firm, do a  
4       demo trial of JobSEQ, we make them sign a non-compete,  
5       or I think that's what you call it, NDA ahead of time.

6           Q.     Did Chmura ever specifically request the  
7       notes that he made from the IEDC conference and that  
8       Texas conference?

9           A.     Well, as a matter of course, typically, the  
10      account managers will get it to us the next day or as  
11      they were flying home. It was requested by Eli, and  
12      then the attorneys requested it.

13           Q.     When did Eli request it?

14           A.     I don't know when the first time was. It  
15      is in his affidavit, but he certainly requested it  
16      after Rick was dismissed.

17           Q.     IEDC conference, did Mr. Lombardo fly home  
18      from that conference?

19           A.     No, he drove. He drove.

20           Q.     And do you know the date that -- do you  
21      know the day that the conference ended, what date that  
22      was?

23           A.     I'm sorry. I don't have it off the top of  
24      my head. It was in October. It was early October, I  
25      believe.

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1                   MS. COOPER: If we take just a short break  
2 so I can look over the topic and make sure I have  
3 covered everything before we start the individual  
4 deposition?

5                   MR. SATTERWHITE: Christine, how long do  
6 you think you are going to have on the individual  
7 piece?

8                   MS. COOPER: Not terribly long. I just  
9 have a few questions.

10                  MR. SATTERWHITE: Okay. Thank you.

11                  MS. COOPER: Do you want a long break or --

12                  MR. SATTERWHITE: Well, that's why I asked  
13 the question. If you are going another hour, hour and  
14 a half, I don't think we need one. If you are going to  
15 go beyond that, we probably ought to talk about it.

16                  MS. COOPER: We can go off the record.

17                  - - - - -

18                  (Discussion had off the record.)

19                  - - - - -

20                  MS. COOPER: Back on the record.

21 BY MS. COOPER:

22                  Q. Dr. Chmura, I do not have any more  
23 questions for you as it pertains to your designation as  
24 a corporate representative. We are leaving the  
25 corporate representative deposition open, but I've

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1       asked all the questions that I need to ask of you for  
2       that.

3                   So moving to the individual deposition  
4       portion. I want to get some clarification on some  
5       things and just better understand a few topics.

6                   Mr. Lombardo was hired as an inside sales  
7       representative, correct?

8                  A.     An account manager.

9                  Q.     And was an account manager an inside sales  
10      representative?

11                 A.     I am unfamiliar with the industry. I  
12      couldn't tell you.

13                 Q.     Okay. Over his tenure at Chmura, how did  
14      Mr. Lombardo's sales performance compare to the other  
15      account managers?

16                 A.     He was the best performer. Austen Steele  
17      was close behind him.

18                 Q.     And I believe you answered this already,  
19      but what is the difference between an account manager  
20      and a senior account manager?

21                 MR. SATTERWHITE: Objection. Asked and  
22      answered, but go ahead.

23                 A.     More experience, therefore, more  
24      responsibility.

25                 Q.     Currently, since Mr. Lombardo has been

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1 terminated, how are account managers classified?

2 A. Some of them are exempt. Some of them are  
3 not exempt. Again, the title is -- I am not sure of  
4 what their exact titles are, exempt versus non-exempt.

5 Q. Why did Chmura change from having all of  
6 their sales -- well, all of the account managers be  
7 exempt to some of them being non-exempt?

8 MR. SATTERWHITE: Objection to the extent  
9 it calls for privileged information, but, otherwise,  
10 you can answer.

11 A. Well, we were provided additional  
12 information to make that assessment.

13 Q. How involved are you in the day-to-day  
14 operations of the sales team?

15 A. Not all that involved. I mean, you know,  
16 we'll -- I know when sales come in because I get copied  
17 on a sale and I will congratulate them. But I try to  
18 spend some time with them when we are up in Cleveland  
19 or they are down in Richmond, but I'm not involved  
20 unless there are issues or problems that someone brings  
21 to my attention.

22 Q. How often would you communicate directly  
23 with Mr. Lombardo?

24 A. Not very often. He might have a customer  
25 that had a question or that we're doing some consulting

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1 work, but, no, not at all very often.

2 Q. You provided testimony as a corporate  
3 representative regarding IEDC conferences, correct?

4 A. Yes.

5 Q. Who attends that conference on behalf of  
6 Chmura?

7 A. I was there, Rick -- Mr. Lombardo was  
8 there. Eli Auerbach was there. Stephanie was there.  
9 Logan -- Stephanie Wiley I believe it is. Logan, whose  
10 last name is slipping me, and I believe Avery Simmons  
11 was there for just one day because he had a side party  
12 at the event place nearby, sports related.

13 Q. Of the individuals you just named, are any  
14 of those, other than Mr. Lombardo, an account manager  
15 or senior account manager?

16 MR. SATTERWHITE: Object to the form.

17 A. Stephanie and Logan.

18 Q. Did Stephanie take any notes at the  
19 conference, to your knowledge?

20 A. Not to my knowledge.

21 Q. And what about Logan? Did he take any  
22 notes that you know of?

23 A. Not to my knowledge, however, when the  
24 attorneys provided us the documents from Rick's  
25 computer, there was a very short document called,

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1 Logan's Notes, I think something like that. So that  
2 sort of implies he had a few notes.

3 Q. Do you know whether or not Logan followed  
4 up with any of the -- well, let me ask a different way.

5 Did Logan's notes contain any potential  
6 customers?

7 A. I didn't cross reference those to the list.  
8 My suspicion is that Rick took Logan's notes and fused  
9 them into his documents.

10 Q. Do you know whether Logan followed up with  
11 any of the prospective clients from the conference?

12 A. I do not.

13 Q. Do you know whether Stephanie followed up  
14 with any prospective clients from the conference?

15 A. I do not.

16 Q. Who is Avery Simmons?

17 A. Avery Simmons is our market -- I say  
18 marketing associate. She is a new graduate, works  
19 under Leslie Peterson.

20 Q. Would she have been expected to take notes  
21 at the conference?

22 A. No, she would not have.

23 Q. What about Mr. Auerbach? Would he have  
24 been expected to take notes from the conference?

25 A. No, he would not. And, in fact, now that

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1 you are bringing this up, another expense that we had  
2 at that conference that I had forgotten about is that  
3 we, along with maybe four other firms, rented a -- it's  
4 a space where you go to and they have all these awards  
5 for different colleges for football, baseball,  
6 whatever. And they have -- you can play basketball,  
7 you can shoot hoops, you can, you know, jump, see how  
8 high you can jump for a basket.

9                   And so we spent money, a couple thousand --  
10 I'm sure a couple thousand, several thousand dollars to  
11 then invite maybe 20 of our customers. So each of us  
12 invited -- that's another expense that we didn't recoup  
13 anything from the notes that would have been with  
14 Rick's documents.

15                 Q.     Was the full purpose of going to this  
16 conference to obtain new clients?

17                 A.     That's how we survive. We go to 12 to 20  
18 conferences and exhibits per year. That's where we get  
19 our lists.

20                 Q.     Would it have -- is it -- let me ask it  
21 this way: At the IEDC conference, were there existing  
22 customers of Chmura in attendance?

23                 A.     Absolutely.

24                 Q.     Did Chmura, or any representative of  
25 Chmura, meet with those clients while at that

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1 conference?

2 A. Absolutely.

3 Q. So was another purpose of that conference  
4 to have some face time with existing clients?

5 A. Yes, face time is important.

6 Q. And you testified in your -- as a corporate  
7 representative, that one of the reasons to change the  
8 commission structure and sales structure was to work on  
9 -- to -- I don't want to put words in your mouth, so  
10 let me strike that and just ask you.

11 In your individual deposition here, why did  
12 Chmura choose to change the commissions and sales  
13 payment structure?

14 A. Oh, we -- it was important to us to be able  
15 to serve our clients, and it is important for us to  
16 grow and serve more people. So -- you know, when we  
17 first hired two salespeople, they told us, don't worry  
18 about it, we will have the whole nation locked down in  
19 two days. You know, Rick used to tell us, In one year  
20 from now, there is not going to be another economic  
21 developer out there who I haven't touched to buy our  
22 software product.

23 So, you know, we are these numbers people.  
24 So we go out and do our research and we find out there  
25 is a market just for that kind of workforce, education,

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1       that's about 60 million. If we stick with these two  
2       salespeople, we are going to be just at the very bottom  
3       of serving all those clients. So in order to serve the  
4       number of clients that are out there, from a business  
5       perspective, we have to increase our staff.

6           Q.     Earlier you also testified that it was to  
7       provide better service to your existing clients,  
8       correct?

9           A.     Correct. Yes, you can't possibly serve 500  
10      people and follow-up with them and make sure that they  
11      are getting the greatest value out of the product that  
12      they can.

13          Q.     So did Chmura receive any benefit by going  
14      to the IEDC and interfacing with existing clients?

15          A.     We certainly got some benefit there.  
16      Whenever I stand up in front of 400 people and talk  
17      about the economy, or about our software, that gives us  
18      more -- more marketing opportunities. That gives us  
19      more name recognition.

20          Q.     And I believe your earlier testimony was  
21      that Chmura wanted the sales team to put more emphasis  
22      on its existing client base, correct?

23                    MR. SATTERWHITE: Object to the form.

24          A.     Yeah, but -- I don't know that I said we  
25      wanted them to put more emphasis on the current client

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1 base, but when they have such a large book of business,  
2 they are not going out and looking for new clients  
3 because they're having to spend more time with their  
4 current clients.

5 Q. Well, I hear you saying two conflicting  
6 things. One of those is this, that the reason for the  
7 restructuring of the sales team was to provide better  
8 service to existing clients -- strike that.

9 A. But --

10 Q. I don't have a pending question. Don't  
11 give me an answer to something that's not out there.

12 How many conferences a year do you attend  
13 personally?

14 A. Me personally? I have tried to cut back on  
15 the number that I attend. I'd rather be at home than  
16 flying around the country, unless, of course, it is a  
17 nice place like Monterey or something like that. But,  
18 unfortunately, I am getting requested to give speeches  
19 more, so I'll end up maybe going to five or six or  
20 seven and just give my speech and then hang out at the  
21 booth a little while and leave.

22 Q. How many conferences does Chmura have a  
23 booth at each year?

24 A. Again, it varies, but I'd say anywhere  
25 between 12 and 20.

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1 Q. Who attends those conferences -- let me  
2 rephrase. That was very broad.

3 Who from Chmura attends those conferences?

4 A. It depends on the vertical. If it is  
5 education, it would be Wilson. Currently, Bryan Shelly  
6 do on the education side. It used to be that we had  
7 salespeople for specific verticals, like economic  
8 development and workforce, but now the salespeople are  
9 going across all verticals. Going to all verticals.

10 Q. Sorry. How many conferences each year did  
11 Mr. Lombardo attend?

12 MR. SATTERWHITE: Object to the form.

13 A. I would have to look at our -- I would have  
14 to look at the past history of it, but we try to -- we  
15 are talking about the salespeople opportunities to go  
16 to conferences.

17 Q. That would be reflected in his calendar I  
18 assume, correct?

19 A. Yes, yes.

20 Q. How frequently, do you know, did  
21 Mr. Lombardo visit client sites?

22 A. Not very often.

23 Q. How about potential clients?

24 A. Not very often as well.

25 Q. Chmura is a Virginia company -- Virginia

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1 limited liability company, correct?

2 A. Correct.

3 Q. I am going to show you an exhibit marked as  
4 Exhibit C. If you could, take a look at it.

5 - - - - -

6 (Thereupon, Previously Marked  
7 Deposition Exhibit C, Copy of Articles  
8 of Organization for a Domestic Limited  
9 Liability Company, Ohio, Dated  
10 9/2/2011, was shown for purposes of  
11 identification.)

12 - - - - -

13 A. (Reviewing.)

14 Okay.

15 Q. Do you recognize this document?

16 A. No, I don't recognize it.

17 Q. It purports to be an Articles of  
18 Organization for Domestic Limited Liability Company  
19 called, Chmura Economics & Analytics, LLC in Ohio. Are  
20 you aware of whether Chmura Economics & Analytics, LLC  
21 also has an Ohio limited liability company?

22 A. So I think we moved it up to Ohio for one  
23 or two years and decided to bring it back here.

24 Q. Is the Ohio company still active?

25 A. No, it shouldn't be.

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1 Q. Was Mr. Lombardo ever employed by the Ohio  
2 company?

3 A. No, that's 2011. He came on 2016, correct?

4 Q. Were you involved with Mr. Lombardo's  
5 annual review?

6 A. This year?

7 Q. Any year.

8 A. I believe I was this year because we went  
9 up to Cleveland to talk to him about that falsified  
10 letter. So I was in that annual review. In the past,  
11 I don't believe I was.

12 Q. When was Mr. --

13 A. To the best of my recollection.

14 Q. And when were you -- when were you up to  
15 see him, Mr. Lombardo, approximately?

16 A. February, March 2019.

17 Q. And would the annual reviews routinely be  
18 conducted in March of that year -- of a year?

19 A. It would have been on his anniversary.  
20 This was a special, peculiar one, though, because he  
21 presented that offer letter to us that we had to do  
22 some research on to make sure that we understood where  
23 it came from. So it might have been late.

24 - - - - -  
25 (Short recess taken).

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1

- - - - -

2

BY MS. COOPER:

3

Q. Dr. Chmura, how does Chmura document the --

4

A. How does Chmura document?

5

Q. Annual reviews.

6

7

A. We haven't had a very formal process in the past, so it could be handwritten notes. It could be an email. So, historically, it was just handwritten notes.

8

9

Q. Would those be placed in the personnel file of the employee?

10

A. It should be, yes.

11

12

Q. And if they weren't in the personnel file, then there would have been no notes written up; is that correct?

13

14

MR. SATTERWHITE: Object to the form.

15

16

A. I would suspect that there were -- well, actually, someone might have kept it in their folder. I can see Laura Leigh having done that, you know, because she keeps a notebook and left notes in that notebook.

17

18

Q. Do you believe any of Mr. Lombardo's annual reviews are in that folder?

19

20

A. I don't know; however, I will tell you that if it was Laura Leigh's, we had a flood at the office

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1 and it was -- her desk area was kind of destroyed and  
2 was thrown out.

3 Q. So there would be no way of knowing?

4 A. Correct.

5 Q. Were you involved with Mr. Auerbach's  
6 termination?

7 A. Yes, I believe I was.

8 Q. What was your involvement?

9 A. Greg Chmura recommended that he be let go,  
10 and so I was -- my involvement was in agreeing.

11 Q. What was the reason provided for that  
12 recommendation?

13 A. Well, it was one of those situations  
14 where -- here, Rick is an example. Where he was  
15 providing information to salespeople before bringing it  
16 to us, and then when we say no and he has to take it  
17 back to the salespeople and say, Oh, I'm sorry they  
18 didn't agree to it, he put us in an awkward position.

19 So he was creating a position where he was  
20 pitting the salespeople against the leadership. And,  
21 certainly, we are a team. We don't need that to  
22 happen. He was also pitting salespeople against each  
23 other.

24 So there were some salespeople he seemed to  
25 show favor to, and others that he did not. He just was

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1 not a good manager. So when we had changes in some  
2 people getting higher salaries and others not, he sent  
3 that information out in an email to the one person who  
4 wasn't available to be at a meeting, and at the  
5 meeting, he presented this information to various  
6 people.

7 You just don't -- you don't have group  
8 meetings for making decisions on who gets promoted and  
9 who isn't.

10 Q. What meetings are you referring?

11 A. I am referring to the meeting where he told  
12 the sales staff -- Rick was not there. This was after  
13 Rick was gone. He told sales staff that two of them  
14 were going to get, basically, promotions, the other two  
15 were not, or two or three, or whatever.

16 So he just was not a good manager. He  
17 wasn't good at communicating. He was causing more  
18 destruction than good.

19 Q. That meeting you just referred to occurred  
20 after Mr. Lombardo's termination?

21 A. Correct.

22 Q. Do you recall approximately the date  
23 Mr. Auerbach was terminated?

24 A. No, I'm sorry, I don't.

25 Q. Were you present during his termination?

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1           A.     No, I was not. I was in Richmond. Greg  
2 Chmura terminated him in Cleveland.

3           Q.     The day he was terminated, did he send in  
4 an affidavit signed by him to Chmura?

5           A.     Yes, he did.

6           Q.     And was he terminated -- is it your  
7 understanding he was terminated at the same time or  
8 concurrently with handing that affidavit in?

9           A.     After turning it in.

10          Q.     How long after?

11          A.     I don't know. You would have to ask Greg  
12 Chmura.

13          Q.     Was it the same day?

14          A.     I believe it was the same day.

15          MS. COOPER: Off the record for a moment.

16                 - - - - -  
17          (Discussion had off the record.)

18                 - - - - -  
19          MS. COOPER: Back on.

20 BY MS. COOPER:

21          Q.     To your knowledge, was there a written job  
22 description for account managers?

23          A.     Not to my knowledge.

24          Q.     Were there any job descriptions for any  
25 positions, written, at Chmura?

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1           A.     At that time, probably not, maybe just  
2 bullet points.

3           Q.     Are there now job descriptions for  
4 different positions?

5           A.     We are moving along that way, yes.

6           Q.     But not while Mr. Lombardo was employed,  
7 correct?

8           A.     That's correct.

9                 MS. COOPER: If we can take a short break?  
10 I think I am finished, but I want to just look over my  
11 notes.

12                 - - - - -

13                 (Short recess taken).

14                 - - - - -

15                 MS. COOPER: I do have another question.

16 BY MS. COOPER:

17           Q.     Very simply this, Chmura -- everyone I've  
18 spoken to so far from Chmura, is using "the  
19 leadership." Can you tell me who is, the leadership?

20           A.     Yeah. You know, I think it was Eli that  
21 started using that term, the leadership, but we have  
22 something called SEA Group, Strategic Enterprise  
23 alliance -- no, Strategic Enterprise Advisers that  
24 would be made up of the CEO, myself; the CTO, John  
25 Chmura; the President, Leslie Peterson; the Director of

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1 Operations, Sharon Simmons; and Director of Research,  
2 Xiaobing Shuai.

3 Q. Okay. Of those five people, is there a  
4 primary decision maker in that group?

5 A. It depends on what the decision is to be  
6 made.

7 Q. Can you tell me how decisions are made  
8 within that group, who takes the lead on what  
9 decisions?

10 A. Well, if it's I.T., that would be John  
11 Chmura. If it was state and government, that would be  
12 Greg Chmura. Sales is Leslie through Brian Shelly  
13 right now. If it is operational related, finance or  
14 H.R., that would come up through Sharon. But  
15 oftentimes, it is Leslie or myself making the final  
16 decision.

17 MS. COOPER: Okay. I don't have any other  
18 questions at this point. I thank you very much for  
19 your time, Dr. Chmura.

20 THE WITNESS: You're welcome. And you  
21 resemble your brother, but you are the prettier one.

22 MS. COOPER: Thank you.

23 MR. SATTERWHITE: I have no questions, but  
24 we will read and sign.

25 (Whereupon, deposition was concluded at 3:35 p.m.)

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1 Whereupon, Counsel was requested to give instruction  
2 regarding the witness's review of the transcript  
3 pursuant to the Civil Rules.

4

5

**SIGNATURE :**

6

7

7 Transcript review was requested pursuant to the  
8 applicable Rules of Civil Procedure.

9

10

## TRANSCRIPT DELIVERY:

11

12

Counsel was requested to give instruction regarding delivery date of transcript.

13

14

Ms. Cooper, Original transcript, yes.

15

16

rough transcript. yes.

17

18

10

22

8-1

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**REPORTER'S CERTIFICATE**

The State of Ohio, )

ss:

County of Cuyahoga. )

I, KELLIANN D. LINBERG, RPR, a Notary Public  
within and for the State of Ohio, duly commissioned and  
qualified, do hereby certify that the within named  
witness, CHRISTINE CHMURA, PH.D., was by me first duly  
sworn to testify the truth, the whole truth and nothing  
but the truth in the cause aforesaid; that the  
testimony then given by the above-referenced witness  
was by me reduced to stenotypy in the presence of said  
witness; afterwards transcribed, and that the foregoing  
is a true and correct transcription of the testimony so  
given by the above-referenced witness.

18 I do further certify that this deposition was  
19 taken at the time and place in the foregoing caption  
20 specified and was completed without adjournment.

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1           I do further certify that I am not a  
2 relative, counsel or attorney for either party, or  
3 otherwise interested in the event of this action.

4

5           IN WITNESS WHEREOF, I have hereunto set my  
6 hand and affixed my seal of office at Cleveland, Ohio,  
7 on this 12th day of May, 2020.

8

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16

Kelliann D. Linberg, R.P.R.,  
Notary Public within and for  
the State of Ohio

17

My commission expires May 25, 2024.

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